

44  
No. 1491

---

---

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY (a Corporation),

Appellant,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),

Appellees.

---

## TRANSCRIPT OF RECORD.

---

Upon Appeal from the United States District  
Court for the District of Alaska,  
Division No. 1.

---

**FILED**

SEP -4 1907



No. 1491

---

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

---

ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY (a Corporation),

Appellant,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),

Appellees.

---

## TRANSCRIPT OF RECORD.

---

Upon Appeal from the United States District  
Court for the District of Alaska,  
Division No. 1.

---



## INDEX.

---

	Page
Affidavit of George T. Barrett (Filed June 8, 1907) . . . . .	256
Affidavit of George T. Barrett (Filed June 8, 1907) . . . . .	288
Affidavit of F. M. Brown (Filed June 8, 1907) . .	264
Affidavit of M. W. Bruner (Filed June 8, 1907) .	209
Affidavit of R. Coulter (Filed June 8, 1907) . . .	245
Affidavit of C. E. Davidson (Filed June 8, 1907) . . . . .	227
Affidavit of Clark Davis (Filed June 8, 1907) . .	253
Affidavit of Clark Davis (Filed June 8, 1907) . .	290
Affidavit of Thomas Dwyer (Filed June 8, 1907) . . . . .	292
Affidavit of H. R. Gabriel (Filed June 8, 1907) .	269
Affidavit of H. R. Gabriel (Filed June 8, 1907) .	276
Affidavit of Henry R. Harriman (Filed June 8, 1907) . . . . .	258
Affidavit of Charles S. Hubbell (Filed June 8, 1907) . . . . .	186
Affidavit of A. M. Keating . . . . .	298
Affidavit of John Krey (Filed June 8, 1907) . . . .	250
Affidavit of John Krey (Filed June 8, 1907) . . . .	285
Affidavit of E. Lissner, J. D. Smith, J. M. Hamilton, F. W. Allen (Filed June 8, 1907) . . .	306

	Page
Affidavit of H. A. McClure (Filed June 8, 1907)	272
Affidavit of S. A. D. Morrison (Filed May 9, 1907)	157
Affidavit of S. A. D. Morrison (Filed May 11, 1907)	162
Affidavit of S. A. D. Morrison (Filed June 8, 1907)	223
Affidavit of S. A. D. Morrison (Filed June 8, 1907)	230
Affidavit of D. B. Skinner (Filed June 8, 1907)	248
Affidavit of Jno. R. Winn (Filed June 8, 1907)	262
Affidavit of Jno. R. Winn (Filed June 10, 1907)	308
Agreed Statement of Facts	278
Amended Complaint	172
Answer	188
Assignment of Errors	342
Bond on Appeal	355
Certificate, Clerk's, to Bill of Exceptions	330
Certificate of Clerk to Transcript of Record	368
Citation (Original)	370
Clerk's Certificate to Bill of Exceptions	330
Clerk's Certificate to Transcript of Record	368
Complaint	146
Defendants' Exhibit No. 8 (Deed from Alaska Petroleum and Coal Company to Copper River and Northwestern Railway Company)	409

	Page
Defendants' Exhibit No. 9 (Abstract of Title to Oil King Oil Claim, Situate in Kayak Recording District, District of Alaska) . . .	413
Defendants' Exhibit No. 10 (Abstract of Title to Standard Oil Claim, Situate in Kayak Recording District, District of Alaska) . . . .	432
Defendant's Exhibit No. 11 (Deed from M. W. Bruner to Alaska Petroleum and Coal Company, Dated June 24, 1903) . . . . .	447
Defendants' Exhibit No. 12 (Incorporation and Qualification Papers of the Alaska Pacific Railway and Terminal Company) . . . . .	453
Exhibit "A"—Attached to Agreed Statement of Facts (Letter from R. A. Ballinger, Commissioner, to the Register and Receiver of Juneau, Alaska, Dated March 28, 1907) . . .	285
Exhibit "A"—Attached to Complaint (Plat) . . . . .	Facing p. 154
Exhibit No. 6, Plaintiff's (Letter from W. A. Richards, Commissioner, to the Register and Receiver of Juneau, Alaska, Dated Washington, D. C., April 28, 1906) . . . . .	372
Exhibit No. 8, Defendants' (Deed from Alaska Petroleum and Coal Company to Copper River and Northwestern Railway Company) . . . . .	409

	Page
Exhibit No. 9, Defendants' (Abstract of Title to Oil King Oil Claim, Situate in Kayak Recording District, District of Alaska)...	413
Exhibit No. 10, Defendants' (Abstract of Title to Standard Oil Claim, Situate in Kayak Recording District, District of Alaska)....	432
Exhibit No. 11, Defendants' (Deed from M. W. Bruner to Alaska Petroleum and Coal Company, Dated June 24, 1903).....	447
Exhibit No. 12, Defendants' (Incorporation and Qualification Papers of the Alaska Pacific Railway and Terminal Company).....	453
Exhibit No. 16, Plaintiff's (Pages 89 to 103, incl., of Report on Progress of Investigations of Mineral Resources of Alaska in 1906).....	473
Exhibit No. 17, Plaintiff's (Protest of the Copper River and Northwestern Railway Company Against Terminal Tract No. 1-B Before General Land Office).....	376
Exhibit No. 20, Plaintiff's (Amended Articles of Incorporation of the Alaska Pacific Railway and Terminal Company).....	381
Exhibit No. 21, Plaintiff's (Articles of Incorporation of the Copper River and Northwestern Railway Company).....	393
Minute Entry of Hearing (June 8, 1907).....	327
Minute Entry of Hearing (June 10, 1907).....	329
Motion to Show Cause.....	156
Opinion, Oral.....	314



	Page
Order.....	365
Order Allowing Appeal and Fixing Amount of Bond.....	353
Order Confirming Settlement of Record on Ap- peal.....	360
Order Denying Injunction.....	310
Order Extending Time to File Bill of Excep- tions.....	313
Order Relative to Exhibits.....	312
Order Setting Time for Hearing.....	185
Order Settling Record for Appeal.....	333
Order Settling Record for Appeal.....	361
Order to Show Cause.....	168
Oral Opinion.....	314
Petition for Appeal.....	340
Plaintiff's Exhibit No. 6 (Letter from W. A. Richards, Commissioner, to the Register and Receiver of Juneau, Alaska, Dated Washington, D. C., April 28, 1906).....	372
Plaintiff's Exhibit No. 16 (Pages 89 to 103, incl., of Report on Progress of Investigations of Mineral Resources of Alaska in 1906).....	473
Plaintiff's Exhibit No. 17 (Protest of the Cop- per River and Northwestern Railway Com- pany Against Terminal Tract No. 1-B Be- for General Land Office).....	376
Plaintiff's Exhibit No. 20 (Amended Articles of Incorporation of the Alaska Pacific Rail- way and Terminal Company).....	381

	Page
Plaintiff's Exhibit No. 21 (Articles of Incorporation of the Copper River and Northwestern Railway Company).....	393
Praecipe for Transcript on Appeal.....	2
Reply.....	201
Stipulation as to Printing Exhibits.....	1
Summons.....	165
Supplemental Complaint.....	336
Telegram from Judge Wickersham.....	367
Telegram to Judge Wickersham.....	167
Testimony on Behalf of Plaintiff:	
John Clark.....	40
John W. Dudley.....	114
John W. Dudley (recalled).....	141
W. H. Hampton.....	7
W. H. Hampton (cross-examination).....	24
W. H. Hampton (redirect examination)...	39
William H. Hampton (recalled).....	120
William H. Hampton (cross-examination).	133
Testimony on Behalf of Defendant:	
M. K. Rodgers.....	42
M. K. Rodgers (cross-examination).....	72
M. K. Rodgers (redirect examination)....	96





*In the United States Circuit Court of Appeals for  
the Ninth Judicial District.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),

Plaintiff and Appellant,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation), KA-  
TALLA COMPANY (a Corporation), and M.  
R. ROGERS,

Defendants and Appellees.

**Stipulation as to Printing Exhibits.**

It is hereby stipulated between the appellant above named and the appellees above named, by their respective counsel, that of the original exhibits in the above-entitled cause transmitted with the record on appeal, none of the maps or photographs shall be reproduced in the printed record on appeal unless hereafter specifically requested by counsel for either the appellant or appellees, in which case they may be reproduced, bound separately, either before or after the submission of the above-entitled cause on appeal. All exhibits other than maps or photographs, however, shall be reproduced in the printed record on appeal.

It is further stipulated that the plat annexed to the original complaint herein shall be reproduced in the printed record upon appeal.

Dated Seattle, Wash., August 5, 1907.

HAROLD PRESTON,  
SHACKLEFORD & LYONS and  
F. M. BROWN,

Attorneys for Appellant.

WINN & BURTON and  
BOGLE, HARDIN & SPOONER,  
Attorneys for Appellees.

[Endorsed]: No. 1491. United States Circuit Court of Appeals for the Ninth Circuit. Stipulation as to Printing Record. Filed Aug. 15, 1907. F. D. Monckton, Clerk.

---

*In the District Court for the District of Alaska, Div.*

*No. 1.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY,

Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY, et al.

**Praeceptum for Transcript on Appeal.**

To the Clerk of the Above-entitled Court:

Sir: Please prepare for the plaintiff and appellant in the above-entitled action for the use of the Appellate Court on the appeal allowed herein on the 18th day of July, 1907, a transcript of the following papers on file in this court in this cause, and forward the same together with the bill of exceptions herein approved by the Judge of the above-entitled court on the 18th day of July, 1907, to wit:

1. Supplemental complaint, filed herein July 26th, 1907.
2. Petition for appeal, filed herein July 25th, 1907.
3. Assignment of errors, filed herein July 25th, 1907.
4. Order allowing appeal, filed herein July 25th, 1907.
5. Appeal bond and approval thereof filed herein July 25th, 1907.
6. Order confirming settlement of record on appeal.
7. Order directing clerk of court at Valdez to file certain papers on appeal herein and then to transmit the same to the clerk of this court at Juneau, filed July 25, 1907.
8. Citation filed July 25, 1907.

HAROLD PRESTON,  
F. M. BROWN and  
SHACKLEFORD & LYONS,  
Attorneys for Plaintiff and Appellant.

[Endorsed]: No. 623-A. In the District Court for the District of Alaska, Div. No. 1. Alaska Pacific Railway & Terminal Co. vs. Copper River & Northwestern Railway Co. et al. Praeceptum. Filed Aug. 2, 1907. C. C. Page, Clerk. By \_\_\_\_\_, Deputy.

---

*In the District Court for the Territory of Alaska,  
First Division.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation), KATALLA COMPANY (a Corporation), and M. R. ROGERS,

Defendants.

### **Testimony.**

This cause coming on for hearing at a special term of the District Court for the Territory of Alaska, First Division, held at Juneau, Alaska, on the 8th day of June, 1907, and the days following as shown by the record, Shackelford & Lyons appearing as counsel for the plaintiff and Winn & Burton and W. H. Bogle appearing as counsel for



defendants, the following proceedings were had and testimony taken:

June 8, 1907.

Court convened pursuant to adjournment at 10 o'clock A. M., whereupon the following proceedings were had.

Mr. SHACKLEFORD.—I have an affidavit here of A. M. Keating which is already on file I believe and I desire to read it.

Mr. BOGLE.—We object to the affidavit.

COURT.—Read it.

(Whereupon Mr. Shackelford reads affidavit of A. M. Keating.)

Mr. SHACKLEFORD.—If the Court please, I have an affidavit here sworn to by F. M. Brown. There is considerable evidence attached to it which we do not care to introduce that part of it. I only desire to offer that portion not included in the testimony.

(Whereupon the affidavit of F. M. Brown was read.)

Mr. BOGLE.—We object to all that as irrelevant connected with any issue in this case.

COURT.—Well you may proceed and the Court will consider its relevancy upon the final determin-

ation of the case at which time counsel may renew their objection. The objection will be overruled.

Mr. SHACKLEFORD.—If your Honor please, I have two copies of the original articles of incorporation. First the articles of incorporation of the plaintiff company and second the amended articles of incorporation which have been copied by the stenographer.

Mr. BOGLE.—I have no objection to the copy being used but I want a stipulation as to when they were filed.

COURT.—Counsel may agree upon the date of filing.

Mr. SHACKLEFORD.—It is agreed that the amended articles of the Alaska Pacific Railway and Terminal Company were filed in the office of the Surveyor General for this district on the 7th day of June, 1907.

COURT.—That is yesterday.

Mr. SHACKLEFORD.—The original articles of incorporation were filed—I will have to get the date of filing.

Mr. WINN.—You have not offered it yet?

Mr. SHACKLEFORD.—I will wait until this afternoon. That will probably be the best way.

Mr. WINN.—If they are certified copies we do not object on the ground that they are copies.

Mr. SHACKLEFORD.—I will withdraw the offer and make it this afternoon.

I have another affidavit. The affidavit of S. A. D. Morrison which I will read.

Mr. WINN.—The defendants object to this as hearsay and incompetent, irrelevant and immaterial, That is a legal question and a matter for the court to determine.

COURT.—The affidavit may be read and the Court will hear it and consider the objection later.

(Affidavit of S. A. D. Morrison read.)

Mr. SHACKLEFORD.—The remaining affidavits are all in rebuttal and I do not think it is proper to offer them now. We will call Mr. Hampton.

W. H. HAMPTON, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. SHACKLEFORD.)

Q. State your name, residence and occupation.

A. William H. Hampton, residence Katalla, occupation civil engineer.

Q. Are you in the employ of the plaintiff in this action?

A. Yes, sir.

(Testimony of W. H. Hampton.)

Q. What position do you occupy?

A. Chief engineer.

Q. When were you first employed by the plaintiff?

A. About the first of September, 1905.

Q. Where did you go at their instance?

A. Katalla, Alaska.

Q. What work were you engaged in in the fall of 1905, at Katalla?

A. Engaged in the surveying of the terminal tract and harbor, along the line of the road, Bering Lake, and through and across the country, and partly up the Copper river.

Q. Did you make any harbor surveys that fall?

A. Yes, sir.

Q. Where?

A. The waterfront, and between the two Martin islands—between that and the main land.

Q. Now that is—that is included in here—Terminal tract No. 1-B?      A. Yes, sir.

Q. How is it situated with reference to Martin Island?

A. It lies due north of the inner Martin Island or Whale Island.

Q. Just explain to the Court where it is proposed to build a wharf and railroad line as shown in the plat attached to plaintiffs' original complaint?

(Testimony of W. H. Hampton.)

A. It is proposed to construct a wharf near corner No. 3 in a southwesterly direction—that is, the southwest end of the island.

Q. What other name has that island?

A. Whale or Martin Island, near this part of the island which is generally known as Whale Island.

Q. Sometimes called inner Martin Island or Whale Island?      A. Yes, sir.

Q. What position does outer Martin Island occupy with reference to inner Martin Island?

A. It lies about sixteen hundred feet in a southwesterly direction from the Inner Martin Island.

Q. Describe to the Court the advantages of having a wharf and terminal grounds at that point.

A. The advantage of a railroad terminal at that point is that the inner island is easily approached by a wharf that it is protected—there are high tides at that point at the southeast point of Whale Island; it is comparatively sheltered and the water is deep enough to accommodate general shipping, and the wharf will project into the area of water protected by the topography of the country from the storms by the outer or Fox Island.

Q. Just explain to the Court what prevailing winds or seas—what the condition in that respect are at that point?

(Testimony of W. H. Hampton.)

A. The prevailing winds are from the southeast, with high seas and ocean swells and the outer island breaks the swells and the high tablelands, from one hundred to one hundred and fifty feet break the force of the wind on the island.

Q. The wharf is run out above the level of high tide?      A. Yes, sir.

Q. I understood you to say that the Inner Martin Island, or terminal, was protected by a strip of high land.      A. By a bar.

Q. Is there any other protected spot on Controller Bay?      A. None that I know of.

Q. I will ask you if there is any other point which is naturally protected for the landing of vessels?

A. No, sir; not that I know of.

Q. Well, you are acquainted with that vicinity?

A. Yes, sir.

Q. You have been there frequently?

A. Yes, sir.

Q. What condition did you find on the ground now included in the exterior boundaries of terminal tract No. 1-B, when you reached there in September, 1905?

A. I found the two corners on the field in position set and properly witnessed according to the line survey. The two rear corners I did not investigate at that time.

(Testimony of W. H. Hampton.)

Q. What were those corners marked?

A. Corner No. 1 and Corner No. 4.

Q. How were they marked?

A. No. 1—12 by 20 inches, and marked A. P. R. T. Co. 1-B.

Q. How was corner No. 4 marked?

A. It is not set just on the corner, but 91.4 feet from where the corner would be is a stake marked W. C. A. P. R. T.

Q. Is point marked W. C. on the westerly side line of the terminal track?

A. On the west boundary.

Q. Who was on the tract when you reached there?

A. There was no one on the tract when I reached there.

Q. What was the condition of any buildings that might have been there?

A. In a dilapidated condition, unoccupied and unfit for use.

Q. Had they been occupied in recent years?

A. No, sir.

Q. Who went there with you?

A. Mr. Morrison, Mr. Keating, and several assistants and employees, George T. Barrett, and I have forgotten the other parties.

Q. They were acting for the plaintiff company?

A. Yes, sir.

(Testimony of W. H. Hampton.)

Q. When was it you surveyed tract No. 1-B?

A. I did not go over the boundaries of the terminal tract No. 1-B until 1906.

Q. The tract had been surveyed previously?

A. Yes, sir.

Q. Were you the engineer in charge of the mapping of the definite location of the plaintiff company?

A. Yes, sir.

Q. From the initial point some twenty miles into Katalla and Bering lake division? A. I was.

Q. I now hand you a blue print of the amended and definite location, and ask you when your definite location was surveyed?

A. The definite location was surveyed between the dates of June 24th and October 4, 1906.

Q. What part of the line did you start that survey on?

A. On that portion of the terminal tract No. 1-B, at the water edge, the shore line.

Q. During what month did you complete the survey in the vicinity of terminal tract No. 1-B?

A. Between the 24th day of June, and the 15th day of July, 1906.

Q. Then you moved on inward? A. Yes, sir.

Q. State what was established on the tract at that time?



(Testimony of W. H. Hampton.)

A. At that time the eastern boundary of the tract and the northeast boundary were established, and wooden stakes were set.

Q. What, if anything, did you do about the monuments?

A. Well, later on, I replaced the wooden stakes with stone monuments.

Q. Marked with the initials of the company?

A. The initials of the company and the number of the corner, and the initial of the tract.

Q. What had been done previous to that with reference to blazing the lines—what, if anything, was done in the way of witness stakes?

A. The lines were blazed and marked upon the ground. The witness stakes were in existence, and the corners were as described in the notice.

Q. Were the lines plainly visible and noticeable?

A. Yes, sir.

Q. And not difficult to find?           A. No, sir.

Q. In the summer of 1906 who if any one occupied the ground included within the exterior boundaries of the terminal grounds of No. 1-B?

A. No one except a party under my control in the employ of the company.

Q. How did they occupy it?

A. Camped on the ground while performing the work there.

(Testimony of W. H. Hampton.)

Q. How long was that possession kept up by the engineering party?

A. The first work—in June and July they did not camp—but in August and September they camped upon the tract for possibly two weeks and then again in October we were camped on the tract completing some other work.

Q. Were you on the tract yourself?

A. From time to time.

Q. What if any claim did you hear being made by any person or corporation as to the right to that tract other than the plaintiff company?

A. I never heard of any claim on the part of anybody to the tract until last March.

Q. I will ask you Mr. Hampton if you know whether it was a matter of common knowledge in the fall of 1905 that the company had located the tract and expected to make that their terminal grounds?

A. Well, it has been commonly known since I went to Katalla in 1905.

Q. Up until what time was the plaintiff the only company engaged in railroad work, wharf or construction work at Katalla?

A. Up until June, 1906, in the middle of the summer after I returned there in 1906.

(Testimony of W. H. Hampton.)

Q. Prior to that time had there been any possibility of another company entering there and constructing a road upon the property in dispute?

A. No, sir.

Q. Now, since that time Mr. Hampton, what work has been done on or in the immediate vicinity of the terminal grounds of the plaintiff company?

A. Why, we started in the month of February to establish a camp and make preparations for actual work.

Q. February of this year?

A. February of this year, and as soon as the camp was fixed actually started the trail about the month of February about the first of March, began getting freight from Seattle and began the work of actually cutting timber, located and erected a sawmill, got out piles and other material for the construction of the wharf.

Q. How many men have you up there at work?

A. When I left on the 28th day of May about three hundred men employed.

Q. Just state in a general way the number of men and amount of supplies on hand so as to give the Court an idea of the equipment you have there?

A. Well, we have either on hand or on the way and in the course of construction, pile drivers—two

(Testimony of W. H. Hampton.)

of which are water drivers—these are probably in shape for use. Five logging engines, five saw-mills—one of which is set up and in active operation with a capacity of 30,000 feet a day. We have driven piles from Martin Island to the main land fourteen or fifteen hundred feet and drove piling on the main land up to the high ground across a small lake and have under construction on the main land and about a thousand piles collected at several points within a distance of about six miles. We have logging operations going on in the vicinity of the terminal tract and back to the rear two logging engines at work there and a lot of small tools and equipment about two hundred ton of sixty pound steel rails laid and push cars about three miles of trestle work together with a large stock of provisions and supplies to equip and keep three hundred men—properly feed and accommodate them.

Q. I hand you an exhibit marked exhibit A, attached to the original complaint and ask you if it is a correct representation of the said terminal tract No. 1-B—an enlargement of the definite survey of the same tract?

A. Yes, that is a correct representation and enlargement—this is on a scale of four hundred feet to the inch while the definite survey plat is on a scale of 2,000 feet to the inch.

(Testimony of W. H. Hampton.)

Q. And that is also a correct copy of the enlarged map of the terminal No. 1-B as filed in the land office?

Mr. BOGLE.—We object that this is not proper proof of the filing of the map in the land department.

A. I suppose Mr. Dudley can identify that.

Q. What about the line within the terminal tract marked east boundary 572?

A. It includes survey 572 it is the east boundary of a soldier additional survey which was a private survey.

Mr. BOGLE.—We object to the statement that it is a private survey.

Q. With the exception of this line marked E. Bdry S 572 that is a correct representation of the present terminal tract?

A. Yes, sir.

Q. Have you or are you able to state from your own knowledge what the material on the ground and the amount of work done—approximately—the cost, the entire cost to date of this work?

A. Yes, sir.

Q. State what it is?

A. I have purchased a great deal of the material myself and am familiar with the wages paid and the amount of supplies used and it is somewhere in the neighborhood of \$250,000.

(Testimony of W. H. Hampton.)

Q. Have you prepared the plans for the erection of the necessary structures and for the railroad yards at this terminal point?

A. We have prepared the preliminary plans.

Q. When were those plans prepared?

A. The preliminary plans and the line of the road were laid out with reference to the future needs of the company in 1905.

Q. Have you a map showing the projected terminal facilities at that point?           A. Yes, sir.

Q. Just take this map and look at it?

Mr. BOGLE.—Are you going to have him testify from that? If you are it ought to be identified.

Mr. SHACKLEFORD.—I will offer this in evidence.

Mr. BOGLE.—You mean the definite survey?

Mr. SHACKLEFORD.—Yes.

Mr. BOGLE.—We object to it. It has no certificate of being on file in the land office.

Q. This blue print was made subsequent to the approval and marking by the Secretary of the Interior?           A. Yes, sir.

Q. That endorsement is an exact fac-simile of the original taken by blue print process?

A. Yes, sir.

(Testimony of W. H. Hampton.)

Q. Now the map has been in your possession since the approval?      A. Yes, sir.

Q. Was the blue print made subsequent to the approval of the secretary of the interior?

A. The blue print was made after the original was made.

Q. That is a correct representation of the original?

A. With the exception of the acknowledgment.

Q. There has been no change in the survey since the 18th of March, 1905?      A. No.

Q. That is merely a clerical error here then?

A. Yes, sir.

COURT.—You mean 1907, you said 1905.

Mr. SHACKLEFORD.—I would like to ask for an adjournment at this time.

(Map marked Plaintiff's Exhibit No. 1.)

COURT.—If there is no objection court will take recess until 1:30 P. M.

June 8, 1907.

Court convened pursuant to adjournment at 1:30 P. M., and all parties being present as heretofore, the following proceedings were had:

W. H. HAMPTON, a witness called on behalf of plaintiff, resumed stand for further direct examination.

(By Mr. LYONS.)

Q. I believe you stated that you were familiar with the terminal company's proposed plans of passing through terminal tract No. 1-B?

A. Yes, sir.

Q. Will you describe the effect of running their terminal line through that property?

A. They expect to start here (indicating on map).

Q. Where do they propose to start from?

A. They intend to start from a point known as Palm Point, a small projection of Katalla Bay and intersect Terminal Tract No. 1-B about midway, enter and cross it in a general westerly direction and go into the Martin river country.

Q. What effect would that have on the usefulness of the terminal tract?

A. It would cut into the proposed switches and yard facilities of the company.



(Testimony of W. H. Hampton.)

Q. How much of the right of way—describe those switches as they appear on terminal tract No. 1-B—as they appear on the map?

Mr. WINN.—It is referred to in one of the plats as exhibit “A”—the map that you have already been testifying concerning.

Q. You made this, did you not?

A. I made this plat.

Q. Describe the terminal grounds as they appear on this plat which has just been handed to you?

A. This area drawn upon the map is terminal No. 1-B; along here is the shore line, this tract here is Martin Island, this left hand tract is the main land close to terminal tract 1-B and there is the terminus of the road.

Q. State where that strikes the terminal grounds?

A. About sixty-five feet west of Corner No. 1 and branch No. 1 diverges about  $25^{\circ} 65'$  and passes through the terminal grounds on a two degree twenty minute curve to the north end of the terminal tract then back on a seven degree curve 1445.23 feet and then back to the first point on a five degree curve to the starting point, forming a Y.

Q. How much of plaintiff's right of way would be cut by defendant's proposed line?

A. Right here—two hundred feet—four hundred feet altogether.

(Testimony of W. H. Hampton.)

Q. Now state, Mr. Hampton, what would be the general effect of a line built as proposed by the defendant company?

A. It would cut all the storage tracks, terminal crossings of the company right in two.

Mr. LYONS.—We now offer this map and plat in evidence.

COURT.—It may be marked by the Clerk and admitted.

CLERK.—Plaintiff's Exhibit No. 2.

Q. When did you state, Mr. Hampton, that the defendant company entered upon terminal tract No. 1-B?

A. They entered upon terminal tract No. 1-B about the 9th of May.

Q. This year?           A. This year.

Q. State whether or not notice was given to them by you or anyone else not to enter on this tract?

A. On April 29th I posted three notices on the tract and some of the employees of the company were building a wagon road along the shore line along the edge of the tract and called the attention of the foreman to the notice and another gentleman who I understand to be the superintendent of construction, Mr. Berg, to the posting of the notices and to take due notice and govern themselves accordingly.

(Testimony of W. H. Hampton.)

Q. What can you say as to whether or not there is any other tract in that vicinity which could be used for terminal purposes other than tract No. 1-B?

A. No other tract there which could be conveniently used in a practical way to connect the island with the main land.

Q. State more fully just what has been done on the terminal tract by the defendant company. (Plaintiff company.)

A. Upon the terminal tract we have driven the piles for a double track road projecting from tract No. 1-A to No. 1-B between fourteen and fifteen hundred feet and on a five degree curve about 1000 feet of which is trestle work, partially driven.

Q. I will ask you about where on terminal tract No. 1-B the defendant company propose to enter and what has been done?

A. They have entered the terminal tract 1-B about the center of the proposed tract; laid out their line and started to grade and cut on the line of the proposed route. I suppose that cut when I left was forty or fifty feet in length and from that cut they started to fill and dam and build up from the cut.

Q. Is that within the tract?

A. Right in the body of the tract. They have done some work and blown out stumps and cut out what trees there on the proposed right of way.

(Testimony of W. H. Hampton.)

Q. Just state what improvements have been made on both tracts by the plaintiff company?

A. On tract One-A about thirteen hundred feet of grade and rock cut about completed, it has a road-bed on the terminal tract 1-A and the wharf together with the trestle work, some rock work, rock cut about fifty feet in depth and there are about seventy men at work. That is the work on terminal tract 1-A at present. On 1-B as I described. We have temporary quarters in the way of tents until we can provide more permanent quarters. A portable house erected for myself, a large boarding house thirty by seventy-five in course of erection and a lot of material stored upon the ground.

That is all.

Cross-examination.

(By Mr. BOGLE.)

Q. You say you are a civil engineer?

A. Yes, sir.

Q. What experience have you had previous to becoming connected with the Alaska Pacific Railway and Terminal Company in the construction of railroads?

A. No great experience in railroad building though I have been closely connected with railroad building most of my life.

(Testimony of W. H. Hampton.)

Q. Have you been the chief engineer of any railroad during that period prior to your connection with this company? A. No, sir, I have not.

Q. Have you ever laid out any roads before?

A. Never laid out any, I have worked on others before.

Q. Have you ever been in charge as chief engineer of any railroad except this one?

A. No, sir.

Q. Have you ever built any railroad of any size?

A. No other public railroad, no.

Q. Have you had any previous experience in laying out terminal ground and switch yards before?

A. No, sir, I have not.

Q. I understand you went to Katalla in September, 1905? A. Yes, sir.

Q. Mr. Webster Brown had been there prior to that time? A. Yes, sir.

Q. And those plans which you introduced here, those drawings of the proposed construction were originally drawn by him?

A. I do not understand your question.

Q. Were the original plans shown here showing the railroad track and the proposed construction on terminal tract No. 1-B originally drawn by Mr. Brown? A. No, sir.

Q. Where are the plans Mr. Brown drew?

(Testimony of W. H. Hampton.)

A. On file in the Department of the Interior. He never drew them.

Q. Who drew that plan?

A. I drew that plan.

Q. What year?           A. 1905.

Q. This blue print?

A. That is a reproduction of it. .

Q. They are exact reproductions?

A. Not exact reproductions—reproductions of the plan conceived at that time.

Q. How much of this plan was used on the plan drawn at that time?

A. The main track and terminal plat.

Q. These were prepared for this hearing?

A. Certainly.

Q. They were drawn for this particular purpose?

A. They were reproduced from the former drawing upon which that is the foundation.

Q. How far had your road been surveyed and laid out?

A. The preliminary survey for 150 miles from the terminus.

Q. What grade have you?

A. Nothing exceeding one per cent.

Q. Have you been over it?

A. A great deal of it but not all.

(Testimony of W. H. Hampton.)

Q. Have you taken the grade of the roadbed?

A. Yes, of that portion which I have been over.

Q. From what point to what point?

A. From Katalla to about four miles above the Copper river.

Q. And you say you have no grade exceeding one per cent? A. No, sir.

Q. What degree of curvature have you on that road?

A. Five degrees curve, maximum.

Q. Now, Mr. Hampton, what is the grade of your main line across the corner of terminal tract No. 1-B? A. We will have no grade.

Q. It is laid on the surface?

A. It is elevated above the surface.

Q. How high? A. From four to ten feet.

Q. Built on piling? A. Yes, sir.

Q. For what distance?

A. For a distance of about one thousand feet, I guess.

Q. From the south side line?

A. Approximately, it may not be quite that far.

Q. And this section across here is piling?

A. Yes, sir.

Q. This tract here would be on piling also?

A. No, sir.

Q. This would not be?

(Testimony of W. H. Hampton.)

A. No, sir, that is on excavated area.

Q. This is your turntable?

A. Where we expect to put it.

Q. There is nothing there now?

A. Nothing across there except some grades on the line.

Q. Would that turntable be on the piling?

A. No.

Q. Would you have to cut down or fill in?

A. Fill part of it.

Q. How much fill is there there?

A. From four to ten feet.

Q. Are you speaking accurately now?

A. No, approximately.

Q. In the construction of the Copper River and Northwestern where it crosses your line it would be on the same grade?

A. I suppose so—it looks like it.

Q. So far as you can tell it is on the same grade as your line?

A. Apparently.

Q. And it maintains the same grade?

A. It looks to me as though it was a little lower.

Q. That is along on this side?

A. Along the center.

Q. It is approximately on the level of your grade?

A. Yes, sir.



(Testimony of W. H. Hampton.)

Q. Where did your preliminary line run coming up to this point from the east?

A. Run from a point here and on in that direction in an angling line.

Q. To the south of the Copper river line?

A. Yes, sir.

Q. And pretty near where the Copper river line is located?

A. Yes, sir.

Q. Were you there at the time the Copper river company made its preliminary survey for its line?

A. I guess I was, it was in 1906.

Q. You saw the surveyors there?

A. I saw the engineers there.

Q. They were along this line?

A. I believe so.

Q. What time was it they made their survey there?

A. I don't know, it was subsequent to our location.

Q. Was it not prior to your location?

A. I don't think it was.

Q. You did not get there until when?

A. June 23, 1906.

Q. When was your survey made?

A. Between June 24th and October 4th, the definite survey.

Q. Is it not a fact that you ran your preliminary line along the shore line and after Mr. Rogers got

(Testimony of W. H. Hampton.)

there you ran your definite location in a different place?

A. There may have been some surveys cut in there.

Q. You know he laid out the preliminary survey?

A. There were some lines in there.

Q. Don't you know that he ran his preliminary survey at the base of the hill at the time you made your definite—didn't you know that?

A. I wouldn't say that I did know it.

Q. You are not prepared to say that you did not know it?

A. There were several lines cut out there.

Q. What is this colored line marked on this exhibit No. 2?

A. Including the line of the preliminary survey.

Q. What does it represent on this map—what is it put in there for?

Mr. SHACKLEFORD.—That portion we expect to introduce at the proper time. I do not think it is proper cross-examination at this time.

COURT.—Well, you have introduced it in evidence.

Mr. SHACKLEFORD.—Very well, we will ask leave to withdraw it. I think Mr. Bogle is making an attempt to fish for his side of the case.

(Testimony of W. H. Hampton.)

Q. What is the topography of the country between this terminal site and No. 1-B?

Mr. SHACKLEFORD.—Same objection.

Mr. BOGLE.—They have introduced testimony concerning their terminal location, switches and sidetracks and things of that kind and they have examined Mr. Hampton upon those matters and he has testified concerning them and now I propose to show that they can put their switch-yard back a little further and it will give them more ground and make is just as convenient to their point of shipment as it is now.

Mr. SHACKLEFORD.—We object to it because we had the surveys made and had the occupation of it previous to their coming and that we are entitled to the possession of the tract.

COURT.—Objection overruled. I will hear it briefly.

Q. What is the topography of the country north of that point?

A. Well, along here it is flat along the creek bottom. Along here there is a raise, a gradual gentle slope on the northwest corner of the tract probably twenty-five feet higher than the grade of the road.

Q. What are those lines?

A. Those are the contour lines.

(Testimony of W. H. Hampton.)

Q. And these figures here represent the elevation?  
A. Yes, sir.

Q. Mr. Hampton, you stated that after you went to Katalla you ran out a line from corner No. 1 to corner No. 2?  
A. Yes, sir.

Q. Did you run a line from corner No. 2 to corner No. 3?  
A. No, sir.

Q. Is it not a fact that the timber was so thick that you could not survey it, that you could not cut it out?  
A. There has been a line cut out.

Q. Is it cut out so that an accurate survey can be made?

A. We cut it out sufficiently so as to chain through.

Q. Why didn't you run it out at that time?

A. Because I did not deem it necessary at that time.

Q. So you did not actually survey it then?

A. Why I went to every corner I found corner No. 2 and then came down and found corner No. 3 correct—

Q. You ran out all except this line here?

A. I did not need to run that.

Q. Where were those cabins located on there—the houses which were on there when you first went there?

A. They were located along in this area here.

(Testimony of W. H. Hampton.)

COURT.—Give me some idea as to where they were?

A. About three hundred feet from corner No. 1 northwest from corner No. 1.

COURT.—The southwest corner?

A. Yes, sir.

Q. How many houses were there there?

A. Four, I think.

Q. Did you have any stoves in them?

A. There was a kind of a stove in them made out of a piece of old boiler iron.

Q. Used for cooking?

A. Used for heating.

Q. Any beds or bunks?

A. Not at the time I went there.

Q. Did I understand you to say that it evidently had not been occupied recently before you went there? A. Yes, sir.

Q. In September, 1905? A. Yes, sir.

Q. Did you occupy them when you first went there? A. No, sir.

Q. Any of your men?

A. Not at that time.

Q. When did you first occupy those houses?

A. In 1906.

Q. Were you there in 1906 when some men acting for the Alaska Petroleum & Coal Co. mentioned in one of the affidavits occupied those cabins?

(Testimony of W. H. Hampton.)

A. Yes, sir.

Q. How long did they occupy that cabin?

A. I don't know, possibly ten days.

Q. You knew he was occupying it for the Alaska Petroleum and Coal Company?      A. No, sir.

Q. Do you know where they got that information—didn't you furnish that information?

A. No, sir.

Q. Do you know where he was cutting timber?

A. No, sir.

Q. Then after he left some of your men occupied some of them?      A. Yes, sir.

Q. And that continued until when?

A. Until the latter part of October or the beginning of November.

Q. How many of the cabins were occupied by your men?      A. Only two.

Q. These were surveyors, they came back at night to sleep?

A. No, it was in making the amended survey of terminal tract No. 1-A.

Q. The improvements which you speak or being put on there the work was commenced since March?

A. February of this year.

Q. The only occupation of possession which your company had of that ground was that some of your engineers slept there in the fall of 1906.

(Testimony of W. H. Hampton.)

Mr. SHACKLEFORD.—We object to that. The survey had been made and I think that sufficient.

COURT.—Overruled.

A. They occupied it in July and August and also in October and November, 1906.

Q. Did you see any other location signs, monuments or stakes or survey stakes in that vicinity near the line of this tract?

Mr. SHACKLEFORD.—We object unless he specifies the tract.

Q. Terminal tract No. 1-B?

A. I saw the corner of survey 572.

Q. The monuments of that survey?

A. Yes, sir.

Q. Did I understand you to say that you never heard of the Alaska Petroleum and Coal Company claiming this property?

A. I know they claim nearly all the country around Katalla but I did not know they claimed this particular tract.

Q. You mean to say that you did not know about it?

A. I may have heard of it in a casual way.

Q. Was Dr. Bruner up there? A. Yes, sir.

Q. Connected with your company?

A. Yes, sir.

(Testimony of W. H. Hampton.)

Q. Was he there when you were making the survey?  
A. Yes, sir.

Q. Did he ever tell you that he had conveyed this property to the Alaska Petroleum and Coal Company?  
A. No, sir.

Q. Never mentioned it?

A. Not that I remember.

Q. You never heard him say that the Alaska Petroleum and Coal Company were claiming to own it as oil land?  
A. Not particularly.

Q. No party stated that to you?

A. It was claimed that it was oil land by some and some claimed that it was not.

Q. I did not ask you to say that. Do you testify that you had never heard anyone else say that they claimed it?

A. I was not aware of any definite location.

Q. Did you ever go to the office of the recorder and ascertain whether or not this land was upon the public domain?

A. No, sir; I have been over the country and I never could find anything.

Q. How is that?

A. I have never been able to find out anything about it.

Q. The property lying to the east is also claimed for oil location?



(Testimony of W. H. Hampton.)

Mr. SHACKLEFORD.—Objected to as not proper cross-examination.

COURT.—Overruled.

A. I believe so.

Q. That claim is either owned by or claimed by the Alaska Petroleum and Coal Company?

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

A. No, sir.

Q. Don't you know that this claim—this oil claim was claimed by the company and Park Davis?

A. I understand it was claimed by other people.

Q. Do you know of any prospecting for oil being carried on there?

A. Yes, prospecting with drills.

Q. Of the Alaska Petroleum and Coal Company. In 1905 and 1906 on property adjacent to your property there?

A. I know of a prospecting drill three and a half miles from there.

Q. What distance?

A. Three and a half or four miles.

Q. How far down have they got?

A. I understand three holes in the neighborhood of thirteen to sixteen hundred feet in depth.

Q. They are still working?

(Testimony of W. H. Hampton.)

A. I believe so.

Q. That work was going on in 1905 and 1906?

A. I believe so.

Q. They are sinking another well this year?

A. I don't know.

Q. Do you know anything about the Alaska Petroleum and Coal Company cutting timber for the construction of a derrick?      A. I do not.

Q. Did your company find any timber suitable for use?

A. We found a few timber on the tract, suitable timbers.

Q. Suitable for derricks?

A. I don't know as to that.

Q. What size?

A. On the tract is a scrub spruce.

Q. This timber that you cut, what was the size of it?

A. I have no definite knowledge of the size of the timber cut on the tract, except some short piles.

Q. Didn't you find some already cut on the tract?

A. Not that I know of—I never found any.

Q. You have been asked about the definite location of your right of way—did you make separate plats and separate surveys of your plat and separate field-notes representing terminal No. 1-A and No. 1-B, separate from the map and field-notes?

(Testimony of W. H. Hampton.)

A. Yes, it is in accordance with the requirements of the Department of the Interior.

Q. The map that you have introduced of the line does not show the plat and notes of the survey of the terminals? A. It shows—

Q. Does it show the field-notes of either of them?

A. No, it does not show that it shows the distances.

Q. Does it show the courses and distances of any of the line? A. I don't believe it does.

Q. Were these particular plats with the field-notes of the survey by yourself and approved by the president of the company used as the survey of the terminal tract filed with the department?

A. Yes, sir.

Q. Filed separate from the definite location to which you refer? A. Yes, sir.

That is all.

#### Redirect Examination.

(By Mr. SHACKLEFORD.)

Q. Where are those original surveys or plats and field-notes of terminal tracts as shown on exhibit "A"?

A. They are filed with the land office in Juneau and sent to Washington where they are still.

Q. They are not here in Juneau?

(Testimony of John Clark.)

A. No, sir.

Q. The map of terminal tract No. 1-B correctly represents the position of the terminal tract on that definite location?

A. Yes, sir.

That is all.

JOHN CLARK, a witness called on behalf of the plaintiff having been first duly sworn testified as follows:

Direct Examination.

Mr. SHACKLEFORD.—I desire to offer, if the Court please in evidence a certified copy of the articles of incorporation of the Alaska Pacific Railway and Terminal Company certified to by the Secretary of State for the State of Washington, a certified copy of the amendments to the articles certified to by the Secretary of State of the State of Washington, together with the endorsements thereon shown and ask leave to substitute certified copies.

Mr. BOGLE.—We object to the copy of the articles as amended and to the endorsements thereon shown because the endorsements show that they were not filed in the office of the Secretary of Alaska until the 7th day of June, 1907.

COURT.—They may be admitted subject to the objections made by counsel and the Court will con-

(Testimony of John Clark.)

sider the objection upon the final determination of the case.

(Marked Plaintiff's Exhibit No. 20.)

Mr. SHACKLEFORD.—I admitted to offer the appointed of agent. It is attached to the same files, the same file of papers.

I also offer the original statement of the executive officers filed on the 1st of July, 1906. The original statement of the company filed on the 22d of August, 1905.

COURT.—No objection—

Mr. WINN.—This is the annual statement which was filed for 1906, and should have been filed, but was not filed until May, 1907.

COURT.—It may be admitted and filed with the same understanding that it is subject to your objection and the Court will consider the objection later on.

Mr. SHACKLEFORD.—I do not wish to detain Mr. Clark, and while he is here I desire to offer in evidence a copy of the original—a certified copy of the original articles of incorporation of the Copper River and Northwestern Railway Company, filed with the Secretary of the District on the 6th day of June, 1905.

(Testimony of John Clark.)

COURT.—No objection, it may be admitted.

(Marked Plaintiff's Exhibit No. 21.)

Mr. SHACKLEFORD.—I also desire to offer in evidence the annual statement of that company for the period—the annual statement of that company, filed in the office of the Secretary of the District on the second of August, 1906.

COURT.—No objections it may be admitted.

Mr. BOGLE.—We only object to it as immaterial.

COURT.—Overruled. It may be admitted.

(Marked Plaintiff's Exhibit No. 21.)

Plaintiff rests.

#### TESTIMONY FOR DEFENDANT.

M. K. RODGERS, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

#### Direct Examination.

(By Mr. BOGLE.)

Q. You are one of the defendants in this litigation?  
A. Yes, sir.

Q. What is your business and vocation?

A. Engineer—civil and mining engineer.

Q. Have you had any experience in railroad construction?  
A. Yes, sir.

(Testimony of M. K. Rodgers.)

Q. For how many years?

A. I started in in the summer 1886 with the Great Northern on railroad construction on the line ending at Butte, Montana, was assistant engineer in charge of a division of their line and in actual charge a little over two years. I quit when they completed the line into Butte. After that I was with the Anaconda Mining Company, and have been with them most of the time since. For about twenty years I have been connected with Hill and Daley.

Q. Have you had charge of the construction of any railroads?

A. Yes, sir.

Q. What roads have you had experience in constructing?

A. Aside from the Great Northern, I located about two hundred miles of line into the Bitter Root Valley out to Philipsburg, a part of that line, the Butte, Anaconda and Pacific built to Anaconda to replace the U. P. Line. This line I had nothing to do with the construction—simply location.

Q. Have you been engaged in the location of any other roads?

A. Well, a great deal of my time with Dr. Daley was spent in going to foreign countries, locating roads and proposed roads to mining camps, and in that capacity I have traveled over a great deal of

(Testimony of M. K. Rodgers.)

the western mining states and Mexico. In Mexico alone I have gone over nearly twelve thousand miles. Also Australia and Tasmania.

Q. Are you connected with the defendant company?  
A. Yes, sir.

Q. When did you become connected with them?

A. The latter part of March, 1906.

Q. In what capacity are you acting?

A. Chief engineer.

Q. Did you go to Katalla during the spring or summer of 1906?  
A. Yes, in June, 1906.

Q. Where did you go prior to that time in the interest of this company?

A. Left New York the first of April under instruction from the company and came up and looked over the situation and gathered all the data I could that was required in the location of the road and reported that data to the company concerning the Copper River region.

Q. What time did you devote to that work?

A. From that time until October.

Q. How many assistants did you have?

A. Five engineering corps with fourteen to sixteen men in each corps. We ran about three hundred miles of line during the summer.



(Testimony of M. K. Rodgers.)

Q. Did you survey the line for a road from tide water to the Copper river basin?

A. Do you mean myself, personally?

Q. Yes.                   A. Not all of them.

Q. Did you go over the one from Valdez in there?

A. I had engineers do it. Either making the field-notes or looking over the survey that had been made two or three years previous to that time.

Q. Did you go over the line surveyed and known as the Copper river or Heiney road?

A. I have been over it.

Q. Over the line of the Alaska Pacific Terminal and Railway Company's road, the plaintiff in this case?

A. Just part of it—at Katalla. I never went over it all only over the summit which would not be a hard—

Mr. SHAKLEFORD.—We move to strike the last part of the question as not responsive to the question.

COURT.—Motion denied.

Q. Did you survey the right of way represented on your map?                   A. Yes, sir.

Q. They made a profile map which shows all of this line of road?

A. Yes, a profile of that part of Alaska immediately adjoining the actual survey.

(Testimony of M. K. Rodgers.)

Q. Look at the paper I now hand you and state to the Court what it is?

A. It is a condensed profile of the proposed route from the confluence of the Chitina and Copper to Katalla, Cordova and Valdez. This small map shows the Chitina river at this point to Valdez. That is the Tonsina route from Thomson pass to the confluence of the Chitina river and Tonsina over Marshall pass down to the mouth of the Tasnuna and up Copper river. The Copper river route over the grade of the Pacific Railway and Terminal Company's line up the Copper river and the line that I adopted after looking over the whole country as the shortest line to the Copper River and the confluence of the Chitina river and into the interior of Alaska, and straight up the Copper river. This is a profile of the location on the summit of Ernestine pass about eighteen hundred feet and Tomson's pass about twenty-four hundred feet at the tunnel and shows a grade of about three per cent on both lines. The Tasnuna route is shown from a point on the Copper river over the Marshall pass summit to Valdez. This is what we call the Lake Charlotte line and is from practically the same point on the Copper river down to Katalla. This shows a one and one-half per cent grade down to Lake Charlotte. On the

(Testimony of M. K. Rodgers.)

south side of Lake Charlotte there is quite a summit and is a route which would have great objections to a company desiring to get into that country. The first thing is the condition of the country. We have especially to guard against snow and it was made so as to raise the grade as much as possible and along the line from Katalla outside of the first mile or two we have approximately thirty miles bank, which we would have to keep clear of snow with snow plows and shovels. It is about 120 miles from the mouth of Chitina river up to Miles glacier, across the Copper river at Miles glacier it is thirty-seven miles against the Lake Charlotte of fifty-eight miles.

Q. You speak of Lake Charlotte, is that on the Alaska Pacific Railway and Terminal Company's line as shown by their maps?

Mr. SHACKLEFORD.—We object to the question as leading and because we do not think it has any materiality whatever in this case.

COURT.—Objection overruled. I cannot tell yet.

Q. Go ahead.

A. It represents the grade. It would not take one very long to pick out which route he wanted to get into the Copper river country.

Q. Does this Lake Charlotte line as shown by their map correctly represent the route?

(Testimony of M. K. Rodgers.)

A. It is all right if it is shown on their map. I understand approximately that is the line they intend to follow.

Q. Does that line strike the Copper river?

Mr. SHACKLEFORD.—We move to strike the last answer where the witness stated that he understands. If this is material—a material point to be submitted on the record it is a matter about which he can only testify from his personal knowledge.

COURT.—Overruled.

Q. Does their line strike the Copper river, and your line on the Copper river?

A. At Miles glacier.

Q. What is the distance to that point by your line?

A. Thirty-seven miles.

Q. What is the distance by their line?

A. Fifty miles.

Q. What is the maximum grade on your line?

A. For the first thirty miles one-fourth of one per cent, about three-tenths of one per cent, or about thirteen feet to the mile.

Q. What is the maximum grade of their line?

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled. I do not see the materiality of this testimony, but I suppose counsel has some object in it.

(Testimony of M. K. Rodgers.)

A. One hundred and thirty-two feet to the mile—that is about one and one-half per cent.

Q. What is the maximum curvature?

Mr. SHACKLEFORD.—I do not care to be objecting all the time, but I want it understood that the same objection is repeated to this line of questions so that I can have my exceptions.

COURT.—Very well.

A. Six degree is the maximum on the Copper river route.

Q. I will ask you to look at the map marked exhibit No. 2 and ask you to indicate where the line of the Copper River and Northwestern Railroad covers this ground?

A. Right in there (indicating on map).

Q. This line through the center of the map?

A. Yes, sir.

Q. At what point does your road start?

A. At Sand Point, Katalla Bay.

Q. Is it shown on this map?

A. No, it is not shown on their map.

Q. Is this a correct map showing the situation at that point?      A. Yes, sir.

Mr. BOGGLE.—I now offer this map in evidence as Defendant's Exhibit No. 1.

(Testimony of M. K. Rodgers.)

Mr. SHACKLEFORD.—We object to it because the data shown on the map does not purport to have been accumulated or gathered under the authority of the witness.

Mr. BOGLE.—I will qualify that.

Q. Look at this map and point out what improvements are contemplated by the Copper River and Northwestern Railway Company from Point Bacon?

A. The construction of a breakwater about one mile long was part of the improvements.

Q. Of what material will that breakwater be constructed?      A. Stone.

Q. Would that be open to ships?

A. Yes, sir.

Q. I see on his map an indication of a line to the northeast from here?

A. It is the line of the Bering river division.

Q. This line running along the shore westerly represents the Copper River line?      A. Yes, sir.

Q. Does that correctly represent the point there at which your line crosses the tract, known as Terminal Tract No. 1-B?      A. Yes, sir.

Q. On what grade are you constructing your line at the point of crossing the plaintiff's line on Terminal Tract No. 1-B?

(Testimony of M. K. Rodgers.)

A. There is scarcely any grade. The location here is approximately fifteen feet as our data shows from the tide level and the grade of the line is practically one-fourth of one per cent.

Q. How did you come to fix that grade?

A. We ascertained their grade and fitted our line to their grade.

Q. If this tract—this terminal tract is to be used for switch yards and freight yards will it be necessary to have the tracts on the same level? On the same elevation as the road?

A. Well, the railroad company would put that at that grade for their own convenience.

Q. At what elevation does your line cross tract No. 1-B?

A. Their grade from here is ten or fifteen feet above the surface of the ground on piling there is about six or seven hundred feet of piling.

Q. Approximately what would it cost to fill that in to make their yards fit for use?

Mr. SHACKLEFORD.—We object to that as incompetent, irrelevant and immaterial.

COURT.—Objection overruled.

A. I would not think of filling it in. I do not think—they would build on piles when they could get around—

(Testimony of M. K. Rodgers.)

Mr. SHACKLEFORD.—We move to strike the answer as not responsive to question.

COURT.—Motion denied.

A. It will cost from ten to fifteen thousand dollars to grade and fill in the land and in that event the roundhouse would have to be put on piles besides that.

Q. What is the lay of the land up north of terminal tract No. 1-B along the westerly line of the Y track which runs to the north?

A. As it is indicated here there is a fill here probably one thousand to fifteen hundred feet in anticipation of yard trackage.

Q. Would it require any filling?

A. It would require the leveling up of the surface of the ground.

Mr. SHACKLEFORD.—I move to strike the answer of the witness and object to his saying whether or not these people could put their terminals at some other point. I think it is immaterial.

COURT.—Overruled.

Q. What would it cost to fit that tract up for terminal purposes as compared to what it would cost to fit up terminal tract No. 1-B?

A. It would not cost twenty-five per cent as much.



(Testimony of M. K. Rodgers.)

Q. Would it be as convenient?

A. They would have to run their freight probably twelve to fourteen hundred feet further to get on solid ground.

Q. Now, Mr. Rodgers, have you examined this land shown on Plaintiff's Exhibit No. 1 by a yellow line and a little to the northward of the terminal site and plaintiff's line of road?

Mr. WINN.—Is that Plaintiff's Exhibit No. 2?

Mr. BOGLE.—Yes.

Q. Have you examined that land?

A. I know all the ground there in a general way but I never understood it that way.

Mr. SHACKLEFORD.—We move to strike out what the witness said as not responsive to the question.

COURT.—Motion denied. You should pay attention and answer the questions.

Q. Have you seen this map before?

A. I saw it here the other morning.

Q. If the defendant's line of road was changed from this point back to a point west of terminal No. 1-B and run on a level with this yellow line marked on Plaintiff's Exhibit No. 2 what would be the effect upon the grade of your line?

(Testimony of M. K. Rodgers.)

Mr. SHACKLEFORD.—We object to the question for the reason that the witness is not qualified to answer the question.

COURT.—Objection overruled.

A. I believe a line could be run on this line with an eighty-four one-hundredth per cent grade—that would be substantially one-fourth of one per cent. It would reduce the capacity of the rolling stock about sixty per cent under the figures on this map.

Mr. BOGGLE.—We offer it in evidence.

Mr. SHACKLEFORD.—We object to it as incompetent and not properly identified and explains nothing coming under the observation of the witness or of anyone testifying in this case.

COURT.—Overruled. It will be admitted merely as illustrative of this particular witness' testimony in relation to it.

CLERK.—Defendant's Exhibit No. 1.

Q. (Mr. SHACKLEFORD.) Who prepared this map?

A. Our engineer at Katalla.

Q. Who gathered the data?

A. Different engineers.

Q. Who wrote this at the north end of the line up here?

(Testimony of M. K. Rodgers.)

Mr. BOGLE.—It is not a part of the map. It can be erased.

COURT.—It may be admitted.

CLERK.—Defendant's Exhibit No. 2.

Q. As to the elevations marked on the map you have no personal knowledge of the correctness of them yourself?

A. Well, I was there and had men in charge. I did not run the instrument.

Q. You relied upon the other men to take the measurements for you? A. Yes, sir.

Mr. SHACKLEFORD.—We object to it on the ground that it is not properly identified and no foundation laid.

COURT.—Objection overruled, it may be admitted.

Q. If your line should be built from a point beginning on the line shown by the yellow line on Plaintiff's Exhibit No. 2 what would be its effect upon the carrying capacity of the rolling stock as compared with a road built on a line as shown on Defendant's Exhibit No. 2?

A. One ton on the drive wheel of a locomotive on the grade of Defendant's Exhibit No. 2 will haul about forty-five tons and if built on the grade of Plaintiff's Exhibit No. 2 it would haul from nineteen

(Testimony of M. K. Rodgers.)

to twenty tons—reducing the capacity at least fifty per cent.

Q. Is there any other grade on your line up through the Copper river valley about the point where you expect to get your freight that would change that result—in other words what is the maximum grade on your line as proposed from this point to the mouth of the Chitina?

A. Three-tenths of one per cent.

Q. What would have have if change as proposed by the plaintiff?

A. According to the profile on that map—84/100 of one per cent—more than two—nearly two-thirds more.

Q. Has the defendant company purchased any rolling stock?      A. Not to my knowledge.

Q. I mean the defendant?

A. Purchased over a hundred cars—sixty either on the ground or on the Seattle dock to be forwarded and thirty other small cars, six locomotives, three steam shovels, some already on the ground and involving somewhere near \$200,000 worth of equipment either on the ground or in transit.

Q. What would be the effect—what I was inquiring about was the rolling stock?

A. That is rolling stock.

(Testimony of M. K. Rodgers.)

Q. What would be the effect on your rolling stock of a change of your line as laid out on Defendant's Exhibit No. 2 with reference to Plaintiff's Exhibit No. 2?

Mr. SHACKLEFORD.—We urge the same objection as before and that it is incompetent, irrelevant and immaterial?

COURT.—Overruled.

A. Cut it down one-half.

Q. State at the point on the Copper river where you will get your cargo what tonnage can one of your locomotives carry to the point of shipment at Katalla?

A. From tide water going in or coming out?

Q. From Copper river out?

A. A two hundred thousand ton train.

Q. If the line was changed so as to follow the line shown on Plaintiff's Exhibit No. 2, how much could you carry on one of your locomotives?

A. A locomotive weighing one hundred thousand pounds—eighty-eight thousand pounds on the drive wheel, eight thousand tons—on our grade it would haul eighteen thousand ton.

Q. If you started with one full train what would be the effect if you would change from your present grade to the one shown on plaintiff's map here?

(Testimony of M. K. Rodgers.)

A. We would have to break our train—have an extra train.

Q. How much extra expense would there be in operating on the line, grade and curvature shown on Plaintiff's Exhibit No. 2 as against a line, grade and curvature surveyed by you and shown on your map?

A. It would cut them in two—that double the expense of the land.

Q. How much would it increase the distance from the point where you leave Point Bacon until you got back to your present tract and grade as shown on exhibit No. 2?

A. On Plaintiff's Exhibit No. 2—six thousand feet on their line—the other line would be a little over nine thousand feet against six thousand feet—in this way (indicating) the line there would be nine thousand feet.

Q. What is the maximum degree of curvature?

A. To the Copper River a six degree curve.

Q. What would be the degree as shown by Plaintiff's Exhibit No. 2?

A. I don't know, it looks like ten or twelve degree curves.

Q. Have you a map made by the government showing the elevation at that point?

A. The coast and geodetic survey map.

(Testimony of M. K. Rodgers.)

Mr. BOGLE.—I offer this map in evidence and ask that it be marked Defendant's Exhibit No. 3.

COURT.—If there are no objections it may be marked.

Mr. SHACKLEFORD.—There are no objections to the map except to the lines drawn on them. I do not know whether they are accurate or not.

Q. The red lines on this map show the Copper River and Northwestern Railway—it shows the defendant's line of road to the Copper river?

A. Yes, sir.

Q. In building a line on that route would you be able to build it on that line and operate it the entire year?

A. We expect so.

Q. What would be the effect of this change?

A. It would reduce the cuts and tunnels just what we wish to avoid if possible.

Q. How many men do the defendant company expect to employ during the present season for the construction of this line of railroad?

A. Three hundred, more than three hundred.

Q. Are they at work there for the company?

A. They are—most of them.

Q. Have you the money and means being furnished in your charge for the prosecution of this work?

(Testimony of M. K. Rodgers.)

Mr. SHACKLEFORD.—We object to that.

COURT.—Overruled.

A. The money is placed in my hands for building this road.

Q. How much money have you for that purpose?

A. Two million dollars for this year's work.

Q. How many miles do you expect to build this year?

A. We expect to build forty miles of line.

Q. What construction equipments have you besides the one hundred cars—how many locomotives?

A. Six.

Q. How many steam shovels?                   A. Three.

Q. How much did they cost?

A. Fifteen thousand dollars.

Q. What other material have you there?

A. Four million feet of lumber, three thousand ties and have about four miles—this is heavy work in here (indicating on map); we have contracts all signed and expect to complete it up to here by the last of October this year.

Q. What work is being done beyond that?

A. We are putting in sawmills and starting the grade. We are letting this work out as fast as we can. At least two hundred men have gone up here with a view to doing that work.



(Testimony of M. K. Rodgers.)

Q. Have you any rails?

A. We have ordered—we have here at Cordova and Katalla thirty miles of rails on hand and we have ordered enough for an additional one hundred and twenty-five miles of road and we will get them as fast as they can run them out.

Q. How is this breakwater to be constructed?

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

A. By means of rock hauled out on the trestle and dumped in the water.

Q. Where do you get that rock?

A. From up in here (indicating on map).

Q. That is beyond the terminal?

A. Yes, sir.

COURT.—How far out will that be?

A. From the firm ground back here out to the water 4725 feet.

Q. Now, the rock you get for the breakwater is up here?      A. Yes, sir.

Q. Can you do any work on the breakwater until the road is completed out that far?

A. No, practically none.

Q. The rock will be loaded on your trains as you build your line out through here?

A. Yes, sir.

(Testimony of M. K. Rodgers.)

Q. A break at this point of your line would stop it?      A. It would stop the traffic.

Q. Now, Mr. Rodgers, if the line should be changed from the one shown on Defendant's Exhibit No. 2 to one shown on Plaintiff's Exhibit No. 2 would it be possible to complete your line by the 12th of March, 1908, to Swan Point?

A. It would change things radically. It would change the whole system.

Q. I am speaking now as to whether or not you could build a substantial road on that line and complete it during the present season?

A. No, we could not go between now and fall—in the working season.

Q. When did you go to Katalla?

A. June, 1906.

Q. What time did you say you went there?

A. June, 1906.

Q. Were you present when the preliminary line of your road was surveyed?      A. I was.

Q. Indicate on Defendant's Exhibit No. 2 about where this line would be with reference to the terminal tract?      A. The preliminary line?

Q. I mean the other side.

A. Ran out this way. We happened to strike it here. We started off across this way (indicating on map).

(Testimony of M. K. Rodgers.)

Q. That is the north—north of Swan Point and ran a line along the shore, the north short of Lake Kahuntla?

A. Yes, across this one about in here.

Q. What about the country to the north of this line?

A. That is a mountainous country—a range of mountains.

Q. Then this line lies along the base of the mountains?      A. Yes, north.

Q. Where did the plaintiff company lay out their preliminary road covering the same territory?

A. Their stakes were down in here—along here.

Q. That is the shore line?      A. Yes, sir.

Q. When you ran your survey did you stake it on the ground?      A. Every hundred feet.

Q. Did you see their stakes in here (indicating on map)?

A. They were not there at the time we ran it they may have been in that neighborhood.

Q. What time did you run the preliminary survey?

A. In June and the first part of July.

Mr. SHACKLEFORD.—We move to strike out the testimony of the witness, they alleged it was made in September.

(Testimony of M. K. Rodgers.)

COURT.—The Court will overrule the objection. Counsel will not be barred by the ruling of the Court.

Mr. SHACKLEFORD.—I understand that I only wish to save an exception.

Q. When did the plaintiff company locate its definite line?

Mr. SHACKLEFORD.—We object to that question unless the witness testifies from his personal knowledge.

COURT.—Yes, if he knows he may state.

Q. Do you know anything about the date?

A. I do not remember the exact date—it was along in July or August. That year I was there on the ground most of the time from June to September or October.

Q. Did you see their stakes on the ground?

A. I did.

Q. Where was then in reference to the line you had run?

A. They ran the definite location on our preliminary line.

Q. Then you changed your definite location down near where their preliminary line was?

A. Yes, sir.

(Testimony of M. K. Rodgers.)

Q. Both your preliminary line and definite location follow approximately the same line?

A. They do.

Q. What improvements, if any, were on this tract marked terminal tract No. 1-B when you went to Katalla?

A. The improvements were some old cabins near the southeast corner, a graded road long there—the center of the claim stating a thousand miles—

COURT.—A thousand what?

A. A thousand feet and across this swamp stating that it was a public route.

Q. Did you make any inquiry around to see who the owners or reputed owners of this terminal tract were?      A. I did.

Q. Where did you make inquiries?

A. I went to the recorder's office—the United States commissioner's office, and had the records looked up as to all the record owners or property along the line we ran over.

Q. Did you get any information as to who the owners were?

Mr. SHACKLEFORD.—Objected to as not the proper way to prove that.

COURT.—You may state yes or no.

A. Yes, sir.

(Testimony of M. K. Rodgers.)

Q. Who were represented to be the owners?

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

A. The Alaska Coal and Petroleum Company.  
The company of which Park Davis is the manager.

Q. The Alaska Petroleum and Coal Company?

A. Yes, sir.

Q. Did you know that their property in that immediate vicinity was in possession of or claimed by that same company as mineral locations?

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

A. I did.

Q. How many of them?

A. How many oil locations?

Q. Those which are known claims?

A. I personally know of seven association claims in the immediate vicinity of Katalla.

Q. Are they adjacent to these claims which are included in terminal tract 1-B?

Mr. SHACKLEFORD.—Objected to as not the best evidence.

COURT.—Overruled.

A. They have a few claims which run from here northwesterly, which are adjacent to them, and then

(Testimony of M. K. Rodgers.)

they have another claim which lies in this direction, and then there is a slight break in the claims, then there is another association claim, and then they have four association claims which come into here.

Q. Now, what is the principal work which has been done by that company during the summer of 1906, to your personal knowledge?

(Argument of counsel.)

COURT.—I will overrule the objection for the present.

A. Most of these claims they are boring for oil. It costs in the neighborhood of \$20,000—

Q. Do you know the depth they had reached the last time you saw them?

A. About sixteen hundred feet.

Q. Had them been boring prior to your going up there? A. No.

Q. You don't know how much they bored prior to your going up there?

A. They had been boring for oil around Katalla for the past three or four years.

Q. Do you know of them doing any work this year? A. They are boring now.

Q. About what amount of oil prospecting machinery have they on the ground being used on these claims, this group of oil claims?

(Testimony of M. K. Rodgers.)

A. In the neighborhood of \$25,000 or \$30,000 worth of machinery.

Q. Have you ever seen any oil or gas coming up there?

A. About a hundred feet from that line it will light with a match and burn.

Q. Mark that place with an X:

(Witness makes mark on map.)

Q. Did you ever look at it?

A. I happen to know it is there—I saw this gas and lit it.

Q. Did it continue to burn for some time?

A. Yes, sir; it burned for quite a while.

Q. Have you ever been through a gas country?

A. Yes, sir.

Q. Are you familiar with the geological conditions favorable to finding oil?      A. I think I am.

Q. What would you say in reference to the geological condition in the neighborhood of Katalla as to whether or not the indications are favorable to the finding of oil?

Mr. SHACKLEFORD.—I do not think the witness has sufficiently qualified to answer the question.

COURT.—Objection overruled.

Q. State whether the geological formation in this vicinity is such as to indicate that there is oil there.



(Testimony of M. K. Rodgers.)

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

A. The geological conditions there are the same as in Pennsylvania, and the oil lies under the coal formation, and there is oil there.

Q. I will hand you some photographs, and ask you whether or not they represent the ground at terminal site No. 1-B?           A. They do.

Mr. BOGLE.—I offer these in evidence as Defendant's Exhibits 4, 5, 6, 7, and 8.

Q. Look at the photograph I now hand you, and state what particular point that represents?

Mr. SHACKLEFORD.—Object to them being offered as a whole until each are identified. I don't know what they are, or where they were taken.

Q. Look at the one I now hand you, Mr. Rodgers, by whom was that photograph taken?

A. By a photographer at Katalla.

Q. Does that correctly represent any point about the terminal tract No. 1-B?

A. It does.

Q. What particular point does it represent?

A. It represents plaintiff's line of piles up to the terminal facilities.

Q. About where, with reference to terminal tract 1-B, shown on this map, Defendant's Exhibit No. 2?

(Testimony of M. K. Rodgers.)

A. Standing in here looking out this way toward the island.

Q. You mean standing at a point to the north?

A. About two hundred feet north looking down the road to Whale Island.

Mr. BOGGLE.—I offer this as defendant's exhibit No. 4.

COURT.—Admitted.

Q. Look at the one I now hand you—what point does that represent?

A. That was taken looking in the opposite direction and looking along the north coast of lake Kahuntla.

Mr. BOGGLE.—We offer that as exhibit No. 5.

COURT.—Admitted.

Q. Look at the one I now hand you and state what that reddish pencil mark is?

A. That, I drew that on there personally, and it shows about the correct line of the Copper River and Northwestern railroad.

Q. What point with respect to this terminal tract 1-B and with respect to the line of road, what does that photograph represent?

A. The field that it takes in?

Q. Yes.

(Testimony of M. K. Rodgers.)

A. It takes in approximately from the southeastern corner of tract 1-B, looking in a northwesterly direction.

Mr. SHACKLEFORD.—We have no objection to the pictures as long as they are shown to be correct.

Q. Look at the photograph I now hand you, and state whether or not that represents any point on your route.

A. That was taken from a point just north of the intersection of their line looking south across the two lines with their crossing.

Q. Are those piles shown on the right hand side of the photograph the piles of their line?

A. Yes.

Q. Is this the pile-driver of the defendant which was afterwards destroyed?

A. It is.

Mr. BOGLE.—We offer that as exhibit No. 6.

COURT.—Admitted.

Q. How was that destroyed?

A. It was blown up by dynamite.

Q. Who did it?

A. I have forgotten the man's name that was arrested for it.

Q. One of the employees of the company?

A. Yes, sir.

That is all.

(Testimony of M. K. Rodgers.)

Cross-examination.

(By Mr. SHACKLEFORD.)

Q. What was the date of the survey from the Pacific Ocean up the Copper River to the interior?

A. The first of April.

Q. 1906? A. Yes, sir.

Q. And you came to Alaska for the purpose of determining the most feasible route from the Pacific Ocean into the interior of Alaska, and the Copper river? A. The Copper river region.

Q. Your company had at that time a definite location for its road, had it not?

Mr. BOGLE.—Objected to as incompetent, irrelevant and immaterial. It is a matter of record if they did have it.

COURT.—Objection overruled.

A. They had a terminus.

Q. Where was that terminus?

A. At Valdez.

Q. After your investigation you reached the conclusion that the most feasible and best route was from Katalla along near the mouth of the Copper river?

A. From Katalla, up the Copper river valley.

Q. When did you first go to Katalla?

(Testimony of M. K. Rodgers.)

A. In June, 1906.

Q. How many men did you take with you at that time?

A. A full party of men, about twelve or fourteen men.

Q. You wish the Court to understand that the preliminary survey was surveyed on the ground in the vicinity of terminal tract No. 1-B, in the month of June, 1906?

A. It possibly extended over into July—I do not remember exactly.

Q. On your making the preliminary survey it was correctly staked?

A. It was.

Q. The law requires, Mr. Rodgers, does it not, that in your survey, in your report of the preliminary survey, you state under oath as to the time which the beginning and ending of the preliminary was had?

A. Yes.

Q. Then, if you certified to the fact that the preliminary survey was not commenced until the month of September, 1906, and swore to it before a commissioner or other person authorized to administer oaths that statement was untrue?

Mr. BOGLE.—I think it is unfair to the witness.

Mr. SHACKLEFORD.—I do not think it is. I think I have a right to examine him on that subject.

(Testimony of M. K. Rodgers.)

COURT.—Go ahead.

Q. What about that?

A. Well, I started the survey, as I said, in June.

Q. But if you certified on the certificate that the survey was not commenced until September, that certificate is untrue?

A. The survey and map filed under that certificate was probably started there in September—it may not have been this first preliminary line that was run.

Q. Then the preliminary survey which you now claim the plaintiff company changed its line on is not the preliminary line under which you claim your rights in the land department?

A. That map is there on the table—I do not remember which line was filed.

Q. You don't claim your preliminary line under the survey which you claim you made in June?

A. No, our survey was jumped by another outfit and we located another line, and we went and started another preliminary survey.

Q. That is the fact about it?                      A. Yes.

Q. And you claim no right under the line that you say you located in June?

A. If we claim a right it is on that survey—I don't remember.

Q. Now, when you came to Katalla you also located another line running along in the same general

(Testimony of M. K. Rodgers.)

direction, and within two hundred feet, in some instances, of the plaintiff's road?

A. Yes, sir.

Q. And, in a number of instances, you ran over their right of way for over a hundred feet.

A. We could not keep off of it. There was no other way to get around it.

Q. And that line, extended up to this pass known as Lake Charlotte?

A. No, we did not go up to Lake Charlotte.

Q. How far is your line there in conflict with the Copper River Company's line?

A. Our line runs up through here, and theirs goes up here.

Q. The Lake Charlotte line is this summit shown on your exhibit No. 1, marked Lake Charlotte line?

A. Yes, sir.

Q. At what point do you connect with the line of the Copper River Railroad that has been surveyed?

A. It is tied up to the point where they started.

Q. And that line would carry you to the Copper river?

A. Yes, that line would carry us to the Copper river.

Q. The Copper River and Northwestern really are in control?

(Testimony of M. K. Rodgers.)

A. The Copper River Railway is not out anything.

Q. I asked you the other question—is it, or is it not?

A. They have all their supplies on hand.

Q. And that is all?

A. I don't know how much more they bought; it is outside of my province.

Q. Does the Copper River Railway Company claim any right under any of these locations?

Mr. BOGLE.—Objected to as not proper cross-examination.

Mr. SHACKLEFORD.—The object of the question is this, the witness has voluntarily condemned the Charlotte pass, and I desire to show by him that the defendant company has a line almost identical with the plaintiff company over this pass.

COURT.—Something was said about that. If you think it is important go ahead.

Q. How about that?

A. They ran a branch line from Bering river up to what is called the English coal company's mine, but there was no instructions given about it, and nothing done to complete the connection over the Queen Charlotte pass.



(Testimony of M. K. Rodgers.)

Q. I am asking you if the Copper River and Northwestern Railway Company claims any right under the survey of the Copper River Company to connect with your line?

Mr. BOGLE.—That has nothing to do with this case.

COURT.—What is the purpose?

Mr. SHACKLEFORD.—It shows that they are at present claiming a right over a pass which the witness is attempting to condemn in his testimony.

Mr. BOGLE.—We do not care whether they have a good grade over that pass or not.

Mr. SHACKLEFORD.—We move to strike all the testimony of the witness in which he said that under no circumstances would he consider the Lake Charlotte pass a good route to the interior.

COURT.—The motion will be denied for the present and will be considered upon the final determination of the case.

Q. I will ask you if it is not a fact that you are at the present time in control of a party surveying over Lake Charlotte pass on over to your location to the Copper River—I am speaking of the Copper River and Northwestern Railroad?

(Testimony of M. K. Rodgers.)

A. I have not taken any steps whatever—there are no routes from here over Queen Charlotte pass—

Q. You have surveyed up to Lake Charlotte?

A. I do not think the line extends quite up to the lake.

Q. This map indicated a line of the Copper River and Northwestern Railroad Company over Lake Charlotte pass?

A. Yes, that is a line of survey made by Mr. Heney over the summit.

Q. That is part of the Copper River Railroad Company. You know, as a matter of fact, that they have purchased the right of way of the Copper River Railroad, don't you?

A. Well, that is my understanding, but I don't know.

Q. Now, when you came on this ground you had never before heard of the Alaska Pacific Railway and Terminal Company?

A. I had heard of a survey there which was referred to as the Dr. Bruner survey.

Q. You never heard of the Alaska Pacific Railway and Terminal Company?

A. I may have heard of it, but I did not remember the name.

Q. You went there in entire ignorance of any other railroad having terminals there?

(Testimony of M. K. Rodgers.)

A. In ignorance?

Q. Yes.

A. I don't know—I knew, in a general way, that three or four surveys had been made around Katalla, and two surveys made to Kyak island, but I never looked into the matter.

Q. You knew that the Bruner survey started from there?      A. When I went to Katalla?

Q. When you went to Katalla in June, 1906.

A. I found it out after I went to Katalla.

Q. Yet you went to Katalla—you had heard of the surveys there?

A. I had heard of the Bruner survey up the Copper river.

Q. From the vicinity of Katalla?

A. Yes, sir.

Q. And when you got there you ascertained about the surveys?

A. I did not bother my head about any other surveys in Katalla at all.

Q. When did you first hear that Martin island was to be used as a terminus for the road?

A. Well, I don't know when it was. I did not know of Martin island.

Q. You knew where the islands were?

A. Yes; I knew where they were, but I had no interest in them.

(Testimony of M. K. Rodgers.)

Q. You were interested in such surveys as had been made and in such projected routes found by other people—in learning about them?

A. I had no interest whatever in any other survey and had no data available about any of them.

Q. But you were interested in such general facts as proposed routes and surveys that had been made up in the belief that they were feasible surveys or routes?

A. I may have in a general way, but I don't think I made any inquiries.

Q. I understand your definite map of location—your preliminary map of location from Katalla which crosses terminal site No. 1-B, surveyed it, filed it in the land office while you were in total ignorance that you were crossing the terminal grounds of any one else?

A. No, I did not say that.

Q. You did not know that then?

A. I did, before the season was over.

Q. That was prior to the time you purchased any right of way from Park Davis or the Alaska Petroleum and Coal Company?

A. Well, when I first went to Katalla, Mr. Davis made this proposition to me—that he would give us plenty of ground for terminal use.

Q. And you paid him for it?

(Testimony of M. K. Rodgers.)

A. We pay for everything we get in Katalla.

Q. You did not accept this proposition until shortly before this suit was commenced, did you?

A. The closing up of the negotiations as either in March or April of this year but we had been negotiating with him before that.

Q. When you say that you came to Katalla to search the records you don't mean to have the Court understand you that you didn't know that any one else claimed a right to use that ground?

A. I remember hearing one time—speaking of Dr. Bruner's people being down there doing some work. I don't think they will do anything but they are down there I have made arrangements to use his cabin along with some other cabins on the ground.

Q. I believe you testified this morning about a survey, their survey of a right of way from a point immediately north of Martin island up north along the north shore of Lake Kahuntla.

A. Yes, they filed right over our survey on top of it.

Q. Now, Mr. Rodgers, you don't want the Court to understand that from an engineer's point of view it is impossible to build a road over that grade?

A. No engineer that knew anything about it would recommend it.

(Testimony of M. K. Rodgers.)

Q. Well, I did not ask you that, what grade did you say it would have?

A. That map shows 34/100 per cent grade.

Q. Is that an excessive railroad grade?

A. It is in the Copper river country.

Q. Do you have that grade anywhere on your line of road?      A. No, sir.

Q. You have some pretty deep cuts and tunnels on your grade?

A. Our grade cannot be reduced by anybody.

Q. I am speaking of a road from—a road around terminal tract No. 1-B.

A. To reduce the grade?

Q. Yes.

A. Yes, by making a tunnel through here.

Q. In any other way?

A. By making a deep cut you could.

Q. Is terminal tract No. 1-B in a canyon?

A. Well, if you will explain what you mean by a canyon.

Q. Well, I am asking you what your definition of a canyon is, what your view or idea of a canyon is?

A. Well, it might be a pass between mountains.

Q. Well, you know that terminal tract No. 1-B is not situated in a canyon, don't you?

A. Well, I would say it was.

Q. You think it is?

(Testimony of M. K. Rodgers.)

A. It is by that definition.

Q. By your definition?           A. Yes.

Q. You swear that from the shore line to the north line of terminal tract 1-B of the Pacific Railway and Terminal Company is a canyon?

A. In railroad language yes.

Q. You confine yourself to railroad language?

A. Yes, sir.

Q. Is it a canyon, pass or defile?

A. Either if you want it that way.

Q. You swear that it is a canyon, pass or defile and you say it is all three in your answer?

A. It is in railroad language.

Q. You say that with great inconvenience you could go around this canyon?

A. We can the same as in any other canyon—nothing is impossible.

Q. You contemplate very deep cuts?

A. Where they are necessary.

Q. Because they are on your proposed line of road that is the reason they are necessary.

A. They are.

Q. You know that it is not impracticable?

A. It is not impossible but it is impracticable to build from here around up that way and would not be considered.

(Testimony of M. K. Rodgers.)

Q. It is nowhere else as difficult as that?

A. Not such a grade.

Q. But you can change this grade by deep cuts?

A. We could—we could do anything on the face of the earth.

Q. What is the elevation at the northeast corner?

A. I don't know.

Q. Have you made any calculation—you can by deep cuts and tunnels?

A. We could go back to our line if we could.

Q. But it is impossible?

A. Not impossible—it is impracticable.

Q. It does not suit your convenience?

A. It does not suit a common railroad engineer's common sense.

Q. You did not swear in this complaint that you intended to cross this terminal tract?

A. You can tell by the record, I do not exactly remember.

Q. You swore to the answer in this case the pleading that was filed?

A. I don't remember just what it is.

Q. That is your signature—I now exhibit to you the answer.

A. Yes, that is my signature.

Q. And you know that it contains this: That you intend to build at or near the said tract referred to.



(Testimony of M. K. Rodgers.)

What do you mean by that?

A. Read the whole sentence?

Q. Which it alleges it intends to build at or near the said tract referred to?

A. Just what it says.

Q. Now, you spoke of oil. I understood you to say there is a space on the east side on which there are no oil claims?

A. No.

Q. You said there was a break in there?

A. I said there was a break in the Alaska Petroleum and Coal Company property. There is a break in their locations but the land is all located for miles around Katalla.

Q. Have you a homestead application on this oil land?

A. I think not.

Q. Have you caused any to be made?

A. There was one up there which had my name on it but it ran out.

Q. Didn't Stephen Birch, one of the employees of the company, enter a homestead claim in that vicinity?

A. He applied for some, had some surveyed.

Q. And you desire the Court to understand you to say that terminal tract No. 1-B is oil land as distinguished from mineral land?

A. Naturally when you see gas coming out of the ground you know then that there is oil there.

(Testimony of M. K. Rodgers.)

Q. Do you want the Court to understand that the land included within terminal tract No. 1-B is oil land as distinguished from non-mineral land?

A. Yes, sir.

Q. And that is based on observations on the ground within terminal tract 1-B?

A. Yes, sir, there is oil there.

Q. And you consider this land valuable for the oil?

A. I don't know about that, whether the oil is in commercial quantities or not.

Q. In your evidence you referred to a certain well drilled by Clark Davis Company as assessment work upon their property in the vicinity of tract No. 1-B which your counsel claims ought to be accepted as assessment work on 1-B. How far are its wells from terminal tract 1-B?

A. The well at present being driven?

Q. Yes.

A. In an air line something like two miles the map will show it.

Q. Where was the other well driven?

A. They are starting a well about one thousand feet from there.

Q. One thousand feet is less than two miles from terminal tract No. 1-B?

Q. Are they shipping oil from them?

(Testimony of M. K. Rodgers.)

A. Not that I know of.

Q. How long have they been engaged in prospecting for oil?

A. To my knowledge since last year but I understand two years before that perhaps in the neighborhood of four years.

Q. And you want the Court to understand that the geological condition and formation in this particular country are similar to the geological conditions in well known oil districts?

A. The geological conditions are suitable for oil.

Q. You say they have been prospecting for oil for the last four or five years?

A. Different parties have.

Q. How far is this English company from terminal tract 1-B?

A. About six miles—between five and six miles.

Q. Do you know of any one producing oil?

A. There is one well produced twenty barrels in one day. They had to pump it out.

Q. How long ago was that?

A. Nearly two years.

Q. You were not there two years ago?

A. No.

Q. The homestead scrip survey lies between terminal tract 1-B and the oil wells which you speak of as Clark Davis Company's oil well?

(Testimony of M. K. Rodgers.)

A. Yes, sir.

Q. And the English company's wells are here?

A. As near as I can tell on that map.

Q. Approximately how far from here?

A. Northeast from the terminal tract about five and a half miles.

Q. Inland?

A. No, right on the coast.

Q. Does the coast make a northeasterly turn there?

A. This is Defendant's Exhibit No. 3.

A. The English Company is right here. This is Strawberry Point, it is approximately east.

COURT.—Between Katalla river and Bering river.

Q. Just indicate where those homestead surveys are.

A. They are not marked on here—they are in there.

Q. Where is your terminal tract at Katalla which have been indicated on this map.

A. At the point indicated by the letter T on Defendant's Exhibit No. 3.

Q. What is this red line running out to deep water?

A. That is the breakwater.

Q. How much of terminal tract 1-B is tide land?

(Testimony of M. K. Rodgers.)

A. I don't know what you would call tide land there.

Q. How much of terminal tract 1-B is covered by the sea at high water?

A. I have not seen the tide on it at all.

Q. Then I understand you to say that terminal tract 1-B the line is to be built on piles?

A. Yes, sir.

Q. Where your line of survey intersects the plaintiff's line—about where is it?

A. It strikes it about six hundred feet to the westward. There is a natural depression in the ground right at that point.

Q. That depression would constitute about one-sixth of the area of terminal tract 1-B?

A. Up in there.

Q. That is the portion which you referred to as having been filled in ground on terminal tract 1-B?

A. Yes.

Q. Now, in the certificate of location your men went on this property indicated here on this side which location you deny—your men went on there and made the survey?

Mr. BOGLE.—We object—

A. Yes, sir.

(Testimony of M. K. Rodgers.)

Q. Is it not a fact that the ground on the west side of terminal tract 1-B was ground claimed by Clark Davis?           A. I think so.

Q. That is within the exterior boundaries of terminal tract No. 1-B?           A. Yes, I think it is.

Q. Now, this depression which you speak of in here the ground up here is available from a short distance which could be used in leveling up that tract filling up the depression?

A. Yes, you could fill up the ocean.

Q. That is not the question I asked you.

A. There is ground available to fill it up, yes.

Q. I understand that you have never taken the level of the northeast corner of terminal tract No. 1-B?           A. I never did anything up there.

Q. You know as a matter of fact that the extreme high tide covers the ground clear up to here (indicating on map).

A. Extreme high tide?

Q. Yes.

A. It is possible but I don't know.

Q. It is a flat country?

A. Yes, it is a flat country. They have very high tides there.

Q. It contains a good many depressions?

A. It may, I do not know.

(Testimony of M. K. Rodgers.)

Q. Then you made no observations of the condition of the ground in and about terminal tract No. 1-B?

A. I have made observations by going up here to it.

Q. I believe you testified in direct examination that it was perfectly feasible for this company to make their terminals to the north and inland—have you made a personal examination on the ground upon which you base that opinion?

A. Yes I came down through here (indicating on map).

Q. But you don't know whether there are any depressions there or not?

A. There is a creek that flows through there.

Q. But these depressions?

A. I don't know.

Q. But there may be depressions in there equally as difficult to handle as the depression which is indicated on your map No. 2?

A. No, sir.

Q. You are positive of that?

A. I don't know; it would take an engineer and instruments to settle that question.

Q. You have examined that sufficient to say that the ground to the north of terminal tract No. 1-B is so high that it would not be covered by extreme high tide?

(Testimony of M. K. Rodgers.)

A. Based on my knowledge and belief it is.

Q. I am talking about extreme high tide immediately to the north of terminal tract No. 1-B.

A. I have never been in there at extreme high tide.

Q. You know there is a creek and a depression running through there?

A. I cannot state about the depression, I know of the stream and if you go up hill you get higher ground. I examined it sufficiently for that.

Q. You are not willing to state with sufficient accuracy whether it would be a fact or not.

A. I have not surveyed it.

Q. It is perfectly feasible to build a terminal tract immediately north of tract No. 1-B?

A. I don't know about immediately back of it but there is available ground north of that ground.

Q. Nevertheless the ground is situated in a canyon, pass or defile? Answer the question.

A. The whole tract?

Q. Yes.

A. I don't know that the whole tract occupies it but most of it does, there is a gulch there.

Q. And you claim in this case that the mountain range comes down to the tract so that it constitutes a pass or defile?

A. The mountain range comes down to the lake.



(Testimony of M. K. Rodgers.)

Q. Doesn't it come down to terminal tract No. 1-B?

A. Yes it does, fifteen hundred feet.

Q. It is a sidehill?

A. It goes up fifteen hundred feet.

Q. I call your attention to these marks on your exhibit No. 6, here is a high snow covered mountain; what is the height of that?

A. That point where your pencil is is probably two hundred and fifty feet. Then it continues on up fifteen hundred feet.

Q. With undulations—

A. I don't suppose it is a straight line.

Q. When did those rails arrive at Katalla?

A. I don't think they are all at Katalla yet. Two left, that is two locomotives left Seattle on the 25th, and a steam shovel.

Q. The testimony was as to how many locomotives are at Katalla?      A. Or en route there.

Q. Exclusive of these two?

A. I said that six locomotives are either at or en route or at the Seattle dock waiting for shipment.

Q. When you said that there were six locomotives there you did not mean in Katalla?

A. No, I mean just what I said—either at Katalla or en route there.

(Testimony of M. K. Rodgers.)

Q. You know very frequently on almost every road where long trains of cars are hauled you have to use extra engines.

A. Not unless it is necessary.

Q. You know that to be a fact that where there is a raise of any considerable length on a portion of the road and where a large number of cars are to be hauled you have to supplement your hauling power with another engine?

A. Yes, sir.

Q. And your objection to this terminal tract No. 1-B is that it will interfere with your projected road?

A. Yes.

Q. When you stated that it would cost fifty per cent more to go around terminal tract No. 1-B you mean fifty per cent for how many miles of the road?

A. It would perhaps affect fifty miles of the road of that division and besides that you would have the cost of breaking your train, and start with a haul up a grade, and there is no reason for doing so.

Q. You don't mean it would affect fifty per cent of the total cost of the haul?

A. No, it would not affect it up there—(indicating) that one hundred and twenty miles.

Q. The fact of the business is that it would mean that you would have to keep an additional engine?

A. It would break your train service.

(Testimony of M. K. Rodgers.)

Q. Where would it break it?

A. Down there, both sides both starting out and coming in.

Q. You mean it would break right in here (indicating) would it break it any where else?

A. It breaks your train service. Suppose you start with a two thousand ton train you would have a break in here, you would break your service in two or three places.

Q. At one place?                      A. At one place.

Q. This Plaintiff's Exhibit No. 4 was taken before the ice had gone out?

A. I guess that is ice in there and snow.

Q. At this point on terminal tract No. 1-B you cross the survey of the Alaska Pacific Railway & Terminal Company's survey?                      A. Yes.

Q. At about what angle?

A. At an angle of approximately fifteen degrees. I believe there is a line located up there, but I don't think they built it.

Q. This definite location, is it not identical at that point with your preliminary survey?

A. I guess it is.

That is all.

(Testimony of M. K. Rodgers.)

Redirect Examination.

Q. (By Mr. BOGLE.) You were asked about Mr. Birch; do you know whether he bought a miner's possessory right or not?

Mr. SHACKLEFORD.—I do not think this is material.

COURT.—I am inclined to sustain the objection.

Q. Mr. Rodgers the line shown on this map Defendant's Exhibit No. 2, is the line of the definite location which has been filed in the land office?

A. This line?

Q. Where it crosses terminal tract No. 1-B.

Mr. SHACKLEFORD.—I do not think this is competent testimony.

COURT.—If he knows he may state.

A. There was some slight change in the final map.

Q. It is substantially as it was on your map and substantially as it was on your preliminary survey?

A. Yes.

That is all.

Mr. BOGLE.—We offer this map in evidence—this is the original and ask permission to substitute a certified copy.

Mr. SHACKLEFORD.—We object to the introduction of it for the reason that it is incompetent, irrelevant and immaterial and for the reason that it has not been sufficiently identified. For the further reason that no discovery of oil has been proven within the limits of the ground in controversy.

COURT.—The objection may be overruled and counsel may raise any objection he wishes upon the final hearing.

Mr. BOGLE.—We offer a certified copy of the location notice, affidavit of labor or assessment work covering the two claims—showing that there are two oil claims, and the subsequent conveyances.

Mr. SHACKLEFORD.—We object to the introduction of the notice and any subsequent conveyances for the reason that the proper prerequisites are not shown and for the further reason that they are not such certified copies as would entitle them to be considered in evidence. We object to the notice of location of the Oil King and the Standard Oil claim for the reason that the same is not identified and is not such a location as would properly locate it on the ground.

COURT.—It is understood that counsel may continue the objection on the final argument.

(Marked Defendant's Exhibit No. 8.)

Mr. BOGLE.—We next offer a location notice signed by W. A. Abernathy and several other parties named therein, together with powers of attorneys, affidavits of labor covering the years 1904-1905; and I am not sure about 1906, showing that the assessment work had been performed on the Oil King and Standard Oil claim.

COURT.—Admitted.

(Two papers marked Defendant's Exhibits No. 9 and 10.)

Mr. BOGLE.—We next offer in evidence a deed from M. W. Bruner conveying to the Alaska Petroleum and Coal Company an interest in those two oil claims. And an affidavit made by him at the same time stating that he was the real owner in interest in the claims and that he had never sold, transferred or disposed of any of them in any other way.

Mr. SHACKLEFORD.—I wish it understood that we make the same objection to all those papers.

COURT.—The objection may be overruled and the papers admitted.

(Marked Defendant's Exhibit No. 11.)

Mr. BOGLE.—I now desire to read the affidavit of John Krey.

Mr. SHACKLEFORD.—We object to this affidavit for the reason that it appears that the subject testified about are merely the conclusion of the affiant and are not permissible in evidence.

COURT.—Let the record show the objection and the objection will be overruled.

(Reads affidavit of John Kray.)

Mr. BOGLE.—I now desire to offer and read the affidavit of George T. Barrett.

(Affidavit of George T. Barrett read.)

Mr. BOGLE.—I now desire to read the affidavit of Clark Davis.

Mr. SHACKLEFORD.—We object to all of the testimony set forth in the affidavit of Mr. Davis for the reason that it is incompetent and irrelevant and states the conclusions of the witness and is hearsay.

COURT.—The objection will be overruled.

(Affidavit of Clark Davis read.)

Mr. SHACKLEFORD.—We object to the affidavit and make a motion to strike the statements therein set out for the reason that they are mere conclusions and do not appear to have come under the personal knowledge of affiant and that they are hearsay. Further for the reason that it does not appear that it is

connected with any of the ground of terminal tract No. 1-B.

COURT.—The motion will be denied, and exception allowed.

Mr. BOGGLE.—I now desire to read the affidavit of Henry R. Harriman, dated the 29th day of June, 1907.

(Affidavit of Henry R. Harriman read.)

Mr. SHACKLEFORD.—We move to strike the same for the reason that none of the matters stated therein are within the personal knowledge of affiant and are hearsay.

COURT.—Motion denied.

Mr. BOGGLE.—I now desire to read the affidavit of H. R. Gabriel.

(Affidavit of H. R. Gabriel read.)

Mr. SHACKLEFORD.—We object to the last affidavit for the reason that the same and the matters therein set forth do not appear to have been within the personal knowledge of the affiant and for the further reason that the statements are nothing more than mere conclusions of the witness.

COURT.—In accordance with my general view of the matter, the objection may be overruled and counsel can take it up in the final argument.

Mr. BOGGLE.—I now desire to read the affidavit of John Price.



Mr. SHACKLEFORD.—Same objection.

COURT.—Objection overruled.

Mr. BOGLE.—I now desire to read the affidavit of R. Holt.

Mr. SHACKLEFORD.—We object to the affidavit for the reason that it does not state matters coming within the personal knowledge of affiant and states simply conclusions of law.

COURT.—Objection overruled.

(Affidavit of R. Holt read.)

Mr. BOGLE.—I now desire to read the affidavit of Charles S. Huggell.

Mr. SHACKLEFORD.—Objected to as incompetent and not stating any facts and not showing sufficient evidence of observation to testify as to the feasibility or possibility of constructing the road.

COURT.—Objection overruled.

(Affidavit of Charles S. Hubbell read.)

Mr. BOGLE.—I now desire to read the affidavit of D. B. Skinner.

Mr. SHACKLEFORD.—Same objection.

COURT.—Overruled.

(Affidavit of D. B. Skinner read.)

Mr. BOGLE.—We have certified copies of all papers on file in the secretary's office up to the time

when Mr. Shackelford filed his amended articles of incorporation, and we can offer them in evidence and save copies, save you getting copies.

Mr. SHACKLEFORD.—Then all I need get is the amended articles.

Court will take a recess at this time until 7:30 this evening.

Reading of affidavits and objections to the same.

June 8, 1907.

Court convened pursuant to adjournment at 7:30 P. M., and all parties being present as heretofore, the following proceedings were had:

Mr. WINN.—I desire to read the agreed statement of facts in this case.

It is stipulated between the parties hereto, that for the purpose of the hearing on the order to show cause why an injunction should not issue against the defendant, the following facts are agreed to:

1. The Alaska Pacific Railway and Terminal Company filed copies of its original articles of incorporation with the Register and Receiver of the U. S. Land Office at Juneau, Alaska, January 20, 1906, and said articles were by that office transmitted to the General Land Office of the United States under date of January 23, 1906.

The Commissioner of the General Land Office declined to accept said articles of incorporation for

filing, and by letter of February 13, 1906, addressed to the Secretary of the Alaska Pacific Railway & Terminal Company, gave his reasons therefor as follows:

The company, under said articles, is authorized *inter alia* to lay out, construct, furnish and equip a railroad line and railroad from a point on the northerly part of Martin's Island in the District of Alaska by some practicable convenient route in a northerly direction from the Pacific Ocean or some bay or inlet thereof; and also to extend, lay out, construct, furnish, and equip said railroad line and railroad from said point at or near the northerly point of Martin's Island to such other point and points on the waters of the Pacific Ocean and the branches and inlets thereof as may be hereafter determined upon by said corporation; and also to lay out, construct, furnish and equip such branch railroads and railroad lines connecting said main railroad lines with other points on Martin's Island and other points in the interior of the District of Alaska, as may be hereafter determined by said corporation.

The acting secretary on March 15, 1902, in considering the articles of incorporation of the Chelan Transportation and Smelting Company, organized under the laws of the State of Washington said:

The articles do not contain the information essential to articles of incorporation of railroad com-

panies, to wit: The points from and to which the line of road is to be constructed and maintained, and the counties through which the road is to pass, and the estimated length thereof. While this case was considered under the provisions of the act of March 3, 1875, the same ruling applies to the articles filed under the Act of May 14, 1898, as the language defining the beneficiaries of said act is similar.

On January 3, 1906, in the case of the Bessie Gold Company, which company is organized under the laws of the State of Washington for the purpose of operating in the District of Alaska, the Acting Secretary said:

It is required in cases of railroads applying for right of way, as well as in the case of wagon or toll-roads, that the articles of incorporation shall show the termini between which the company is authorized by such articles to construct its road.

Under said rulings of the Department, the articles under consideration cannot be submitted to the Secretary of the Interior for approval, and I hereby decline to do so. In order to correct said articles so that they may be accepted for filing the company should amend the same so as to give the termini of the line of road which it intends to construct, and the estimated length thereof, and a certified copy of said amended articles should be furnished this office.

On February 24, 1906, amended articles of incorporation of the Alaska Pacific Railway and Terminal Co., complying with the requirements of the foregoing decision of the Secretary of the Interior, were filed in the office of the Secretary of State of the State of Washington, and on April 6, 1906, certified copy of said amended articles were filed with and accepted by the Secretary of the Interior.

2. That the map of definite location of the right of way of the plaintiff was filed in the local U. S. Land Office at Juneau, Alaska, December 20, 1906, and forwarded to the General Land Office at Washington, D. C., on March 18, 1907, the Secretary of the Interior making the following endorsement thereon: Department of the Interior, March 18, 1907. Approved subject to all existing rights. James A. Garfield, Secretary.

3. That thereafter said map of definite location of said right of way was returned to the local Land Office by the Commissioner of the General Land Office, accompanied by a letter, a copy of which is hereto attached and marked Exhibit "A"; this map was returned to the Alaska Pacific Railway and Terminal Company by the Register of the United States Land Office at Juneau, Alaska, after its receipt by him from the Commissioner of the General Land Office, and after making such corrections as plaintiff deemed necessary, pursuant to said let-

ter, was redeposited by the plaintiff, on the 29th day of May, 1907, in the office of the Register and Receiver of Juneau, Alaska, and is now in the custody of the said Register and Receiver, being held at plaintiff's request for use upon this hearing; that the plaintiff while agreeing to the statement of facts in this paragraph contained, reserves the right to urge such objections as it may see fit upon this hearing to the admission of the said letter of the Commissioner of the General Land Office, and the statements in this paragraph contained.

Mr. SHACKLEFORD.—In that connection, we object to this letter for the reason that the same has no bearing on this case. The evidence of Mr. Hampton shows that the only changes that were made were clerical changes in the field-notes made to correspond to the actual conditions of the map and for the approval of the Secretary of the Interior. That it is incompetent, irrelevant and immaterial and furthermore the letter does not show that the Secretary of the Interior ever saw the letter.

COURT.—I cannot tell yet, of course.

Mr. SHACKLEFORD.—I simply want my objection to show in the record.

COURT.—The objection may be overruled.

Mr. WINN.—Exhibit "A." March 28, 1907. Alaska Pacific Railway and Terminal Company.

Returning map and field-notes for correction. Register and Receiver, Juneau, Alaska. Sirs: I enclose herewith map and field-notes in duplicate filed by the Alaska Railway and Terminal Company, showing the definite location of the Katalla & Bering Lake Division from a point on Whale Island twenty miles northeastwardly over unsurveyed lands to a point on Shepherd's creek. This map was approved by the Secretary of the Interior, March 18, 1907, with the understanding that the discrepancies existing between the map and forms thereon and the field-notes should be corrected by the company. These discrepancies exist as to the tie connection of station 3 plus 05 and the U. S. L. M. No. 572; as to the tie connection of the six mile station with R. P.; as to station 830 plus 56 with U. S. G. S. B. M.; and as to the terminal 20-mile station with U. S. L. M. Kayak No. 3. You will forward the map and field-notes in duplicate to the company and request it to make the necessary corrections at as early a date as possible, and to return them to you, and you will forward them to this office for further examination. Very respectfully, R. A. Ballinger, Commissioner.

4. That a map of preliminary survey of the Copper River & Northwestern Railway Company across the lands in controversy was filed in the office of the Commissioner of the United States Land at

Washington, D. C., on the 26th day of January, 1907, and transmitted by that office to the Commissioner of the General at Washington, D. C., and on the 28th day of January, and on March 22, 1907, was endorsed by the Commissioner of the General Land Office as follows, to wit: "Washington, D. C., General Land Office, March 22, 1907. This plat by letter of this date to R. & R., Juneau, Alaska, was accepted for filing in this office under the provisions of section 4, Act of May 14, 1898." But the plaintiff reserves the right to urge any objection upon the hearing herein to the introduction of said map, or to any of the facts stated in this paragraph.

Mr. SHACKLEFORD.—That is all right; I only wish the record to show that we object to it as incompetent, irrelevant and immaterial. The return was after the date of the rights of plaintiff company had already been fixed.

COURT.—Overruled.

5. That the map of definite location of the right of way of said Copper River & Northwestern Railway Company across the land in dispute was filed in the United States Land Office at Juneau, Alaska, on the 5th day of March, 1907, and was mailed by that office to the Commissioner of the General Land Office on the 13th day of April, 1907; that this map was lost and cannot be found in the office of the Com-



missioner of the General Land Office at Washington, D. C.

I will state in this connection that at the time this stipulation was entered into this map had not been received at Washington. It had been forwarded by Mr. Dudley, but it had not reached there yet. Mr. Shackelford and I agreed to stipulate to go on with the hearing, and not wait for that. As I was going down the street during the recess I received the following telegram from Horace F. Clark, one of the attorneys for the defendant company: Washington, D. C., June 8, 1907. Winn & Burton, Juneau, Alaska, maps filed March fifth first twenty-nine miles received by commissioner yesterday. Horace F. Clark. That is June 7th, to-day is the 8th. I desire to offer the telegram in evidence.

Mr. SHACKLEFORD.—We object to it as incompetent, irrelevant and immaterial, and not the best evidence.

COURT.—Of course, Mr. Winn, that is nothing more than your statement.

Mr. WINN.—Very well, I will file an affidavit setting out those facts.

6. That prior to the 3d day of June, 1907, the firm of Winn & Burton, attorneys at law, and one of the attorneys for defendants herein, upon telegraphic inquiry to R. A. Ballinger, Commissioner of

the General Land Office at Washington, D. C., received in response to said telegram the following telegram from R. A. Ballinger: Plat terminal sites 1-A and 1-B, Controller Bay, Alaska Pacific Railway & Terminal Company not approved. Approval March 18 affects road line only. Map preliminary location Copper River & Northwestern accepted April 17. No definite location referred to. R. A. Ballinger, Commissioner, and it is stipulated that said telegram may be offered in evidence subject to the objection of the plaintiff, the same as if the original signature of R. A. Ballinger, Commissioner, were identified and proved, and with the same force and effect as if the said R. A. Ballinger had signed and transmitted to the said attorneys with his original signature over the word "Commissioner" a letter of similar words and import. That the plaintiff reserves the right to urge any objection to the said telegram in evidence therein as above stated.

Mr. SHACKLEFORD.—We now object to the whole of it as incompetent, irrelevant and immaterial, and that it is the statement of the legal conclusion of a matter that is not now before the Commissioner of the General Land Office or within his jurisdiction, and the further objection that it is an opinion expressed without any notice to the attorneys on the other side, and is not binding on any of the parties.

COURT.—You may proceed.

Mr. WINN.—Either party herein shall have the right at the hearing to offer in evidence to the court any of the maps above referred to or other maps with the endorsements thereon, and to use the same as evidence subject to such objections as counsel may see fit to urge at said hearing, and may offer any other or additional affidavit or documentary evidence of whatever nature they may desire, subject to such objections as may be made at the hearing.

And it is further stipulated that W. H. Hampton may be called and orally examined on behalf of the plaintiff at said hearing, and M. K. Rogers may be called and orally examined at said hearing on behalf of the defendants. Signed by the attorneys on both sides.

Now, the affidavit which I filed in reference to those telegrams is as follows:

John R. Winn, being first duly sworn, on oath deposes and says: That I am an attorney at law and a member of this bar, and a member of the firm of Winn & Burton, two of the associate counsel for the defendant in the above-entitled action; that I am well acquainted with the facts, affidavits, pleadings, and the agreed statement of facts signed by the attorneys for the respective parties to this action, which said agreed statement of facts is filed herewith and

hereby referred to and made a part of this affidavit. That on June 2, 1907, the firm of Winn & Burton sent the following telegram to the Commissioner of the General Land Office, Washington, D. C., pertaining to the maps and plats referred to in the pleadings, affidavits and agreed statement of facts herein, to wit: Juneau, Alaska, June 2, 1907. Commissioner General Land Office, Washington, D. C. What is status map terminal sites Alaska Pacific Railway & Terminal Company included in map returned to Juneau office for correction March 28th last. Also status map definite location Copper River Northwestern Railway Company right of way referred to in your letter April 17th last to Horace F. Clark, Washington, D. C. Wire. Winn & Burton, Attorneys Copper River Northwestern Railway Company. And in reply to said telegram the firm of Winn & Burton received the following telegram, viz.:

“Washington, D. C., June 3, '07.

Winn & Burton, Juneau, Alaska.

Plat terminal sites one A and one B, Controller Bay, Alaska Pacific Railway and Terminal Company not approved. Approval March 18th affects road line only map preliminary location Copper River Northwestern accepted April seventeen. No definite location referred to. R. A. Ballinger, Commissioner, which said telegram last above set forth is the same telegram referred to in the said agreed

statement of facts signed by the attorneys and counselors, respectively, of the plaintiff and defendants in said above-entitled cause and referred to herein.

JOHN R. WINN.

Subscribed and sworn to before me this 7th day of June, A. D. 1907.

NEWARK L. BURTON,

Notary Public for Alaska. Residing at Juneau, in said District."

We now offer section 1497 of the Code of the State of Washington containing the corporation laws. It has been stipulated by Mr. Shackelford that this was the law in the State of Washington at the time the Alaska Pacific Railway & Terminal Co. filed their articles of incorporation.

Mr. SHACKLEFORD.—It is agreed that that was the law at that time.

Mr. BOGLE.—That is the law and has been the law since that time. Section 1497 Hill's Statutes of the State of Washington.

Defendant rests.

Mr. SHACKLEFORD.—I do not know whether we have had a ruling on all the objections or not.

COURT.—I think the record ought to show that the Court has overruled all objections so far and allowed both sides an exception thereto.

Mr. SHACKLEFORD.—We now offer in evidence the field notes of P. R. Byrnes filed in the land office at Juneau, Alaska, August 27, 1905, and the file marks and other identification marks thereon.

Mr. BOGLE.—We object to that as incompetent and irrelevant so far as I can see, and is not an issue in the case.

Mr. SHACKLEFORD.—We expect to follow it up.

COURT.—Objection overruled.

Mr. SHACKLEFORD.—It may be conceded that the approval—it is approved by the Surveyor General. The approval does not appear on this, otherwise I would ask leave to ask Mr. Dudley that question. I will now call Mr. Dudley.

JOHN W. DUDLEY, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. SHACKLEFORD.) I will ask you if survey No. 572 was approved by the Surveyor General and by the surveyor's division of the Department of the Interior prior to the time of its transmission to you?

Mr. BOGLE.—We object to it as incompetent, irrelevant and immaterial and not the proper way to

(Testimony of John W. Dudley.)

prove an official act by an officer. The approval should be manifested on the document itself.

COURT.—Objection overruled.

A. The approval is printed on the face of it. William L. Distin, dated Sitka, Alaska, August, 3, 1905. Plat of United States Survey No. 572 of a soldier's additional homestead claim under act of March 3, 1903, by P. R. Bryne, situate in Kayak Mining District, District of Alaska. Is certified by C. E. Davidson, United States Deputy Surveyor, December 14-15, 1904. The original field notes of the survey of S. A. H. claim by P. F. Byrnes from which this plat has been made has been examined and approved, and are now on file in this office. And I hereby certify that they furnish satisfactory and correct description of said claim as will, if incorporated into a patent, serve fully to identify the premises and such reference made therein to natural object and permanent monument as will appropriate and fix the locus thereof. And I further certify that this is a correct plat of said claim made in conformity with the original field-notes of the survey thereof. And the same is hereby approved. Surveyor General's office, Sitka, Alaska, August 23, 1905. William L. Distin, Surveyor General, District of Alaska.

(Testimony of John W. Dudley.)

Q. Now, Mr. Dudley, I will hand you a map and plat being marked Alaska Pacific Railway and Terminal Company map and preliminary survey, Kattalla Division. Amended as required by law and the General Land Office dated April 28, 1906. No. 46,569. Surveyed June 10 to 20, 1905, by Webster Brown, United States Deputy Surveyor for Alaska, scale 1/240000—one inch equals 2,000 feet. Filed for general information Washington, D. C., July 2, 1906. Filed in the United States Land Office at Juneau June 15, 1905. Received in the United States Land Office, Juneau, Alaska, June 15, 1906, with corrections. P. M. Mullen, Receiver.

Mr. BOGLE.—We object to that evidence if the court please as not rebuttal in the first place and for the further reason that the stipulation introduced in evidence shows that this company filed its amended articles on the 6th of April, 1906, and it shows that the amended articles were executed 24th of February, 1906. And that was the first time that that corporation was authorized to acquire land for the purpose of using it for a right of way.

COURT.—I will overrule the objection with the same understanding that the Court will hear the whole matter on the final argument.



(Testimony of John W. Dudley.)

Mr. SHACKLEFORD.—We offer this in evidence and ask leave to furnish a certified copy.

COURT.—That may be done.

Mr. SHACKLEFORD.—We further offer in evidence a map of the preliminary survey, September 23 to 25, 1906. William H. Hampton, civil engineer, chief engineer, scale 2,000 feet to the inch with the indorsements thereon. For the general information of the Commissioner, March 5, 1907. With the further indorsement received and filed December 20, 1906, together with the field notes which are upon the face thereof.

Mr. WINN.—Why put that in the record?

Mr. SHACKLEFORD.—I want to cover the whole twenty miles previous to the approval of the definite survey. I think it is important. With the understanding that certified copies are to be substituted.

Mr. BOGLE.—The same objection.

COURT.—Overruled. It may be admitted.

Q. Have you the original letter?

A. It is in the other roll of papers.

Mr. SHACKLEFORD.—I now offer this letter being a letter from W. A. Richards, Commissioner, to the Register and Receiver of the United States Land

(Testimony of John W. Dudley.)

Office at Juneau, Alaska, dated April 28, 1906, returning the preliminary location under the survey of Webster Brown of the Katalla division and the enlarged map of terminal No. 1-B and No. 1-A for correction. I have a copy of that letter which I ask leave to substitute.

Mr. BOGLE.—We have no objection to the copy we object to the letter as incompetent, irrelevant and immaterial.

Mr. SHACKLEFORD.—We ask to have the letter marked Plaintiff's Exhibit No. 6. The map of the preliminary survey of the Katalla division will be Plaintiff's Exhibit No. 4. The map of the preliminary location of the Bering Lake Branch will be Plaintiff's Exhibit No. 5. Now, I have got the wrong map; I will withdraw the offer of the map of the Lake Bering Division.

Q. Mr. Dudley have you the map what is the map of the Copper river definite location from Valdez to Duck Valley?

A. I have not. You mean the location of the Copper river and Northwestern Railway Company from Valdez to Keystone canyon?

Q. Is that the definite location?

A. Yes. This is the definite location but it does not seem to be in the certificate. There is, however,

(Testimony of John W. Dudley.)

the approval by the secretary which is customary to place on the map of the definite location.

Q. Have you the map in the office, Mr. Dudley, of the definite location?

A. Yes, that is the map that was adopted on the 25th of May, 1905, as the definite location as described therein.

Q. Have you a map in your office Valdez to Duck Valley, 119 definite location?

A. That is the only map I believe of the definite location of this company.

Q. This map represents about twenty miles and the word Duck Valley do not occur on the face of it?

A. That is the only one I know of.

Mr. SHACKLEFORD.—Very well, we will offer this map.

Mr. WINN.—You offer this map?

Mr. SHACKLEFORD.—We offer the map of the definite location of the Copper river and Northwestern Railway from Valdez Bay to the head of Keystone Canyon, surveyed from April 13 to May 15, 1905. Scale one inch, 2,000 feet. Approved Department of the Interior June 17, 1906. Approved subject to all valid existing rights. E. A. Hitchcock, Secretary. And ask leave to substitute a certified copy.

(Testimony of John W. Dudley.)

Mr. WINN.—Same objection.

COURT.—Overruled.

Mr. SHACKLEFORD.—In that connection we offer the terminal grounds as shown thereon west of the town of Valdez 38 and 90/100 acres.

Mr. WINN.—Same objection.

COURT.—Overruled and admitted.

Mr. SHACKLEFORD.—I do not think it is necessary to copy it but we will substitute a copy if the Court desires. This will be exhibit 5 and the other exhibit No. 5 will be withdrawn.

That is all.

Mr. SHACKLEFORD.—We will ask to have Survey No. 572 designated as exhibit No. 7.

COURT.—Admitted.

That is all.

WILLIAM H. HAMPTON, a witness heretofore called on behalf of the plaintiff, being recalled, testified as follows:

Direct Examination.

Q. (By Mr. LYONS.) Have you had any experience in examining oil land? A. Yes, sir.

Q. What experience have you had?

(Testimony of William H. Hampton.)

A. I had experience when I was in the land department in Oregon for about seven years before coming to Alaska.

Q. State what were your duties in that connection?

A. Examining the land for the department which railroad companies desired to take up—I selected the land and got title to it. Examined it for minerals and things like that.

Q. You stated that you were familiar with terminal tract No. 1-B. Are you acquainted with the land generally in that vicinity? A. Yes, sir.

Q. As to whether it was mineral in character or contained any oil? A. Yes, sir.

Q. State how extensive your examination was in that respect?

A. Well, I have been all over terminal tract 1-B and examined the rock stratification on the land and the rock exposed in the creek bed and vicinity.

Q. Have you ever seen any evidence of oil there?

Mr. BOGLE.—We object to that they cannot contest that matter in a suit of this nature?

COURT.—Probably not.

Mr. LYONS.—I want to understand if there was any discovery made?

(Testimony of William H. Hampton.)

COURT.—I will overrule the objection and allow an exception.

Q. What can you say about any evidence of oil on terminal tract No. 1-B?

A. There is no evidence of oil on terminal tract No. 1-B or for a considerable distance on either side.

Q. Are you familiar with the tract of land embraced in survey No. 572?           A. I am.

Q. How much of that is identical or nearly so with tract 1-B?

Mr. BOGLE.—We object to that as incompetent, irrelevant and immaterial to any issue in this case. The plat shows where these different tracts are.

COURT.—Undoubtedly they will be bound by the plat but counsel probably has some definite object in asking the question. The objection will be overruled.

Q. State how much of that plat, tract 1-B is included in the boundaries of that survey?

A. A large portion of it is included in the exterior boundaries of survey No. 572.

Q. I hand you the exhibit attached to the original complaint in this action and ask you if the plat there indicates the portion of terminal tract 1-B which is included in survey No. 572?

Mr. BOGLE.—Same objection.

(Testimony of William H. Hampton.)

COURT.—Overruled.

A. It does. This shows the boundaries of the tract.

Q. It is marked on the plat north boundary No. 572 and east boundary No. 572.

COURT.—The other boundaries is the ocean?

A. Yes, sir.

Q. Are you familiar with the land lying easterly from terminal tract 1-B? A. Yes, sir.

Q. Do you know of any location of oil claims as testified to here this morning? A. Yes, sir.

Q. How far is that from this tract?

Mr. BOGGLE.—We object to this testimony.

COURT.—Overruled.

A. Between three and three and a half miles.

Q. How far is the nearest oil well from terminal tract 1-B? A. Three and a half miles.

Q. Do you know of any other surveys between the oil well and terminal tract No. 1-B?

Mr. BOGGLE.—Same objection.

COURT.—Overruled.

A. Yes, sir.

Q. How many?

A. Survey No. 147 Sitka Division town site of Katalla and No. 38, a survey made by Stephen Birch

(Testimony of William H. Hampton.)

made last winter approved by the surveyor last spring.

Mr. BOGLE.—We object to that as not the best evidence.

Q. How far from terminal tract 1-B are those entries of Birch?

Mr. BOGLE.—We object to that.

COURT.—Overruled.

A. About one mile east of Palm Point on the shore midway between Palm Point and the town of Katalla.

Q. I think you said but I do not recall whether you stated the time when you completed your preliminary survey of the westerly portion of the location that is now definitely located on this plat?

A. I did not make any preliminary survey.

Q. I should have said the definite location when did you begin to make the survey?

A. June 24, 1906.

Q. When did you complete this section near the terminal site?      A. On about July 15th.

Q. How far did that extend beyond their terminal site?      A. About three miles.

Q. Easterly?      A. Yes, sir.

Q. You heard Mr. Rodger's testimony in reference to the depressions?      A. Yes, sir.



(Testimony of William H. Hampton.)

Q. Will you describe that portion—explain about those depressions.

Mr. BOGLE.—You went into that before.

COURT.—If there is anything new you may bring that out.

Q. Will you describe the conditions there?

A. On the terminal tract there is a portion of a small lake coming out of the country to the north, then a raise, some marshes or slough about three or four hundred feet then the ground raises rapidly and as a rule the elevation is at a higher altitude than the easterly terminal tract. More than half of the terminal tract is high ground and above the grade of the line of the roadbed.

Q. You are testifying now in regard to the terminal tract?

A. Yes. They can take the material from the grade and fill that in.

Q. Can that be done by taking the material from up here and bringing it down there?

A. Yes, sir.

Q. Can you state approximately the expense of doing that?

A. I have not gone into it in any detail but it could be done at a very reasonable expense the material is easily handled.

(Testimony of William H. Hampton.)

Q. I will call your attention to Plaintiff's Exhibit No. 2. You stated this morning that you were familiar with the proposed line of the defendant company through the terminal tract? A. Yes, sir.

Q. Will ask you what you can say about those conditions?

A. The line of the first preliminary survey struck over a branch of the Copper river to the northeast of Palm Point and runs along here (indicating on map).

Q. What can you say as to the feasibility of running a line up along here (indicating on map).

A. You could run a line from here up along this way (indicating).

Q. Does this plat show the altitude?

A. The plat shows the altitude the contour and the elevation.

Q. What can you say as to the feasibility of constructing a line of road from Palm Point following this line to the north of terminal tract 1-B?

Mr. WINN.—He has not testified that he is qualified to answer that he has never done any surveying up there.

COURT.—Overruled.

A. The angle and line is on the profile map it shows the grade obtained by the preliminary survey. It could be put in with not to exceed ten degree

(Testimony of William H. Hampton.)

curves and possibly as easy as six degrees. It means the crossing of our line of railroad.

Q. What can you say as to the feasibility of constructing a line as proposed by the defendant?

A. Of course it runs into heavy grade—cuts and fills—for a mile and a half or two miles. I do not approve of deep cuts in a snow country. Cuts from fifty to seventy-five feet deep.

Q. For what distance?

A. About a mile and a half. The ground has an elevation of about a hundred feet in about two miles.

Q. Do you know the depth of the cut to the west of the tract of the defendant company?

A. Their stakes on the ground shows a cut of seventy-five feet.

Q. What will you say as to the necessity of cuts as indicated on Plaintiff's Exhibit No. 2?

A. There are some slight side hill cuts on that line of road.

Q. What can you say as to the comparative ex-pense of the two lines?

Mr. BOGLE.—Objected to as incompetent, irrelevant and immaterial.

COURT.—Overruled.

A. From observations it would not exceed fifty per cent of what it will on the present plan.

(Testimony of William H. Hampton.)

Q. What can you say as to the feasibility of reducing the grade over the line you have indicated from Palm Point?

A. If the grade is started here after leaving the terminal it would not be difficult to have a grade of about one-half of one per cent.

Q. How long would it take—how long did it take you to make the survey—how many days?

A. I had three gangs of men going over that ground for one week checking it up so they could make affidavits to it.

Q. All the work was done under your supervision and direction?

A. Yes, sir.

Q. What are those wave lines?

A. Contour lines, elevation and level lines on the sidehill showing the slope and declivities. You will notice the lines are closer together here and that shows that the ground rises rapidly.

COURT.—I notice your survey is on the lake?

A. Yes we intend to pile over the lake.

Q. I will call your attention to this United States geological survey having a contour line fifty feet this map I believe was referred to by Mr. Rodgers I will ask you to examine this map.

A. Yes, I am familiar with this map.

Q. What can you say as to the correctness of this map?

(Testimony of William H. Hampton.)

A. According to this they are at fifty foot intervals. These lines around here are taken by sight and the others are taken by curvature.

Mr. LYONS.—I would like to offer this map in evidence.

COURT.—If there are no objections it may be admitted. Admitted.

(Marked Plaintiff's Exhibit No. 18.)

Q. I will hand you a photograph—who made that? A. I took the photograph myself.

Q. When?

A. Along about the 25 or 26th of May this year.

Q. Will you describe the different places on this photograph?

A. They are taken from one point with the camera pointed in different directions. This shows the coast in there the shore line and Cape Martin in the distance on the left. This is the office and my residence. This is the double track trestle work going out across a little lake. This is the pile-driver used on the trestle work. This is the trestle and this shows the high ground immediately north of the lake on the terminal tract and this angle of survey runs in behind this first knoll here.

Mr. SHACKLEFORD.—Take your pencil and mark that point represented by the angle represented by a yellow line on Plaintiff's Exhibit No. 2.

(Testimony of William H. Hampton.)

A. It comes along this hillside on a gradual grade it runs in behind this knoll and timber and across here—some trestle work, some cuts and some fills.

Q. I mean mark approximately where it is from that point and initial it H. Now, that is the only elevation in the immediate vicinity of the northeast corner of the terminal site.

(Afterward marked Plaintiff's Exhibit 15.)

A. Yes, sir.

Q. And it is correctly marked on this map?

A. Yes, sir.

Q. Immediately to the north of the terminal tract describe the nature of the ground with reference to depressions?

A. Immediately to the north of terminal tract 1-B the creek narrows up considerably in a sort of funnel shape and there is a slight depression in the creek bed. It is not quite a canyon.

Q. Is that ground covered by high tide?

A. Extreme high tide covers a portion of the terminal tract.

Q. Does it cover the ground in here?

A. It covers the marshy country in here.

Q. That is contained in the exterior boundaries of the tract?      A. Yes, sir.

(Testimony of William H. Hampton.)

Q. Then as I understand you to the north of terminal tract 1-B the ground is comparatively level?

A. Yes, you go up there through the creek and follow the creek bed up here for about a mile.

Q. Then the line from this point between Palm Point and the Copper river on the proposed route to the west is kept up on the hill side for the purpose of keeping the grade? A. Yes, sir.

Q. What is the highest elevation which those lines represent?

A. They represent a ninety-foot contour.

Q. That is on the proposed Copper River and Northwestern Railway Company's line?

A. Yes, sir.

Q. What would be the distance from the top to the bottom of the grade or cut?

A. Seventy-five feet.

COURT.—Will they have to cut down that seventy-five feet?

A. They would have to grade it out.

Q. This level here is sea level?

A. Right here it is sea level marked zero.

Q. Are you acquainted with the Copper River and Northwestern Railroad Company?

A. Yes, sir.

Q. Mr. Rodgers said something about there being no place to build terminal ground, that the ground

(Testimony of William H. Hampton.)

was unfit for it. I will ask you to state if it is not the same character of ground along in here?

A. It is simply in this respect. It is all made ground. They could get their material up here.

Q. I wish you would explain to the Court why it is the grade of the terminal tract is so much higher than the surface of the ground?

A. Well, the sea grade of the road is twenty-five feet.

Q. What is the rise of the tide?

A. Thirteen and six-tenths. It is placed on that level to avoid the ocean swells. They have heavy swells there and it was put at that height to avoid any difficulty in case of an extremely high tide.

Q. Would it be possible to move the terminal tract back up the hill?

A. I have not been able to find any beyond for the terminal tract. If they move it back it will not give room for the switch tracks. You have to have room to handle the cars and turn them around and store them.

Q. This turntable and the switches as indicated on this map then have been made at the standard curvatures?

A. They have been made on the ordinary curvatures; they are made at a convenient level to handle the ordinary number of cars.



(Testimony of William H. Hampton.)

Q. Mr. Rodgers had something to say about the grade on Charlotte pass and shown on Defendants' Exhibit No. 1. What was the grade he got?

A. Either one or one and a half, I don't know what he got; I have already got data and know that I got up in no grade more than one per cent and less.

That is all.

Cross-examination.

(By Mr. BOGLE.)

Q. What is the difference from this point here over to Palm Point?

A. That point—have you a scale, I cannot tell without a scale.

Q. Approximately?

A. It is a little over one mile.

Q. Just a fraction over a mile?

A. Seventy-four hundred feet, a little over a mile.

Q. You start there at sea level and you reach ninety feet?

A. It would be about eighty-five feet.

Q. What grade would that give you?

A. Eighty-five feet to that point, it would necessitate a cut being made on the surface—a little over one per cent.

Q. You would have what per cent without the cut?

(Testimony of William H. Hampton.)

A. That would be difficult to say.

Q. Can't you state what it would be?

A. I could give you my conclusion.

Q. Then you would have to have considerable of a cut to get down to that grade?

A. Well, they could be replaced by a curve.

Q. Now when you reach here what level have you here?      A. Sixty feet.

Q. This is sixty feet here?      A. Yes, sir.

Q. You would have to make sixty feet to that point?      A. You would cut down there.

Q. You would have to cut it practically all the way?

A. No, sir. The maps show where the cut could be.

Q. Is that blue print of the survey made—the terminal tract as filed with the register and receiver. Is this a blue print made from the original drawing?

A. No, it is not a blue print from the original drawing.

Q. Is it a correct copy?

A. Yes, I think it is correct.

Q. They file the original map and field-notes in the office of the receiver?      A. Yes.

Q. Is this a copy of the field-notes?

A. I don't know, I have not read it.

Q. How do you think this was made then?

(Testimony of William H. Hampton.)

A. This is evidently a map which has been taken from the original plat. That plat was filed in the land office. I think it is a correct copy.

Q. This is correct then? A. Yes, sir.

Q. That is drawn on what scale?

A. Four hundred feet to the inch.

Q. This shows terminal tract No. 1-B and No. 1-A? A. Yes, sir.

Q. Filed December 12, 1906, in the register's and receiver's office at Juneau, Alaska?

A. Yes, sir.

Mr. BOGLE.—We offer this in evidence.

Mr. SHACKLEFORD.—We object to it—shows on its face that it is not a certified copy and for the reason that the endorsement of December 20, 1906, is misleading in that as a matter of fact the survey of terminal 1-B was filed in the United States land office and this file mark is misleading. I would not object to it otherwise.

Mr. BOGLE.—That is the way Mr. Dudley stamped it.

Mr. SHACKLEFORD.—You know, Mr. Bogle, that the files show that the terminal tract has never been corrected. I have no objections if you admit that the file mark of December 20th has nothing to do with terminal No. 1-B.

(Testimony of William H. Hampton.)

COURT.—Well, let it be filed. It is conceded that terminal one-B was filed long prior to December 20, 1906, and that the land department has never required a correction of it.

That is all.

(Marked Defendants' Exhibit No. 13.)

Mr. SHACKLEFORD.—I move to strike from the exhibit the file mark of December 20, 1906.

COURT.—Overruled.

Mr. SHACKLEFORD.—I want that explained because the record might be very misleading.

(By Mr. SHACKLEFORD.)

Q. The map which has just been exhibited to you, Defendants' Exhibit No. 13, is I understood you to say a correct representation of the boundaries of 1-A and 1-B? That is so far as they are concerned?

A. Yes, sir.

Q. I will ask you if you certified to that map and returned it to the office shortly before December 20, 1906.

A. Yes, sir.

Q. That file mark has reference to the correction of what terminal tract?

A. Terminal tract 1-A.

Q. It has nothing to do with terminal tract 1-B?

A. No, sir, this stamp was not on when I made the tracing and because it is not on my original map here which I made the original filing in the Juneau

(Testimony of William H. Hampton.)

land office. It was originally filed in the Juneau land office and subsequently sent to Washington. The original was filed here in Juneau on January 20, 1906, that has not been returned and is still in the land office at Washington.

Q. I will hand you this photograph and ask you what it is?

A. This is a view from the sawmill showing part of the trestle of the main line looking up that way and showing the country beyond and to the north.

Q. Whose sawmill?

A. The Alaska Pacific Railway and Terminal Company's.

Mr. SHACKLEFORD.—We offer this in evidence and ask to have it marked.

COURT.—It may be admitted.

(Marked Plaintiff's Exhibit No. 9.)

Q. What is this photograph?

A. That is a view from the Alaska Pacific Railway Company's tract showing the trestle work, the inner Whale island, Martin island from the mainland looking in a southwesterly direction.

Mr. SHACKLEFORD.—We offer this in evidence and ask to have it marked.

COURT.—Admitted.

(Marked Plaintiff's Exhibit No. 10.)

Q. What is that?

(Testimony of William H. Hampton.)

A. It is a view in a westerly direction from the sawmill showing the camp and tents looking westerly across the terminal tract.

Mr. SHACKLEFORD.—We offer it in evidence.

COURT.—Admitted.

(Marked Plaintiff's Exhibit No. 11.)

Q. What is that?

A. That is a view showing the pile-driver standing on the trestle and showing the proposed crossing by the other company and showing their pile-driver.

Mr. SHACKLEFORD.—We offer that in evidence.

COURT.—Admitted.

(Marked Plaintiff's Exhibit No. 12.)

Q. What is this?

A. That is another view of the trestle work of the Alaska Pacific Railway and Terminal Company—the pile-driver is on the point of the proposed crossing of the Copper River and Northwestern Railroad looking in the direction of the island and showing the trestle work in existence on the 16th of May.

Mr. BOGLE.—How far was that from the eastern line of the terminal?

A. Probably 150 feet. It might be as much as 150 feet.

(Marked Plaintiff's Exhibit No. 13.)

(Testimony of William H. Hampton.)

Q. This is the sawmill?

A. That is a general view of the interior of the sawmill. It was not thoroughly completed yet.

(Marked Plaintiff's Exhibit No. 14.)

That is all.

COURT.—Is that all of your oral testimony?

Mr. SHACKLEFORD.—I think that is all.

COURT.—It is understood then that the oral testimony in this case is closed. Let the record show that.

Mr. SHACKLEFORD.—I now desire to file some affidavits. The affidavit of S. A. D. Morrison, dated the 7th day of June. The affidavit of M. W. Bruner, dated 7th day of June. One of Charles E. Davidson, sworn to on the 7th day of June, and the remaining portion which will make all of the affidavit of A. M. Keating.

COURT.—They may be admitted.

Mr. SHACKLEFORD.—I have a copy which Mr. Bogle gave me of a protest which is now on file in the United States Land Office and if he cares to allow it to go in as the protest which was to be filed on the 18th of May.

COURT.—Counsel can come into court Monday morning and settle that. Court will take a recess until 10 o'clock Monday morning.

June 10, 1907.

Court convened pursuant to adjournment at 10 o'clock P. M., and all parties being present as heretofore, the following proceedings were had.

Mr. SHACKLEFORD.—There is one matter I wish to take up. In coming up here I find I have brought the wrong map. The only thing I wish to offer is the map of the second division.

Mr. BOGLE.—It may be offered at this time and read in the record later.

Mr. SHACKLEFORD.—There is one picture which Mr. Hampton referred to as having been taken from the water front on the north part of defendant's terminal tract 1-B, the same picture upon which he placed the letter H. It has not yet been offered in evidence?

COURT.—It may be admitted if there is no objection.

(Marked Plaintiff's Exhibit No. 15.)

Mr. SHACKLEFORD.—The file marks of the blue print of our definite survey is not very distinct. There is the stamp of the register and receiver stamped on the original which has not taken well and it might not be intelligible and I would like to supply the reading. Perhaps I had better have that supplied with ink later. I would like to recall Mr. Dudley.



JOHN W. DUDLEY, a witness heretofore called, resumed the stand on behalf of the plaintiff.

Mr. SHACKLEFORD.—We now offer in evidence the Alaska Pacific Railway and Terminal Company's map and preliminary survey—surveyed from September 2 to October 31, 1905, by William H. Hampton of the Bering Lake and Copper River division. It is marked United States Land Office, Juneau, Alaska, received and filed January 23, 1906, John W. Dudley, register. With the further endorsement, General Land Office, April 28, 1906, in accordance with provisions of section 4, act of May 14, 1898.

Mr. BOGLE.—We have a general objection. I understand this is not ground adjacent to the ground in controversy.

Mr. SHACKLEFORD.—It is understood that we may substitute a certified copy. The only object in introducing it is to show that the first preliminary survey was run fourteen miles and was the remaining basis for a twenty-mile section.

Mr. SHACKLEFORD.—We also desire to offer pages from 89 to 103, inclusive, of the United States Geological Survey Report on Progress of Investigation of Mineral Resources of Alaska in 1906. Bulletin No. 814, Series A, Economic Geology, 94. Being

(Testimony of John W. Dudley.)

that part of the report designated Petroleum at Controller bay.

Mr. BOGLE.—We object to that as incompetent, irrelevant and immaterial.

COURT.—Ordinarily I should say it is incompetent; it is a public document not issued under oath.

Mr. SHACKLEFORD.—It shows the wells, the position of the wells.

COURT.—The objection will be overruled. It may be admitted.

(Marked Plaintiff's Exhibit No. 16.)

That is all.

Mr. SHACKLEFORD.—There is one more matter. This is a copy of a protest.

Mr. WINN.—This is a paper which I received from Horace F. Clark of Washington, D. C., and he enclosed that as the form of protest which he had drawn against the filing of the map of the terminal location filed by the Alaska Pacific Railway and Terminal Company. The protest has been filed, but whether there has been any amendments or additions to it I don't know. It is filed May 18.

COURT.—It may be admitted upon that statement.

(Marked Plaintiff's Exhibit No. 17.)

That is all.

Testimony closed.

(Followed by argument of counsel for both parties.)

During the trial of said application the following exhibits were offered and received in evidence, to wit:

#### PLAINTIFF'S EXHIBITS.

1. Map of definite location Alaska Pacific Railway & Terminal Co., Katalla and Bering Lake division.
2. Map showing topography east, west and north Alaska Pacific R. Y. & T. Co. Terminal Tract No. 1-B, and proposed track layout and conflicting crossing Copper River and Northwestern Railway Company. Showing proposed line in yellow of route feasible for defendants to pass outside of and behind Terminal Tract No. 1-B. Also profile and angle line—possible grades etc., along said proposed route.
4. Map of preliminary survey of the Katalla Division.
5. Copper River Railway Co.'s definite location from Valdez to head of Keystone Canyon.
6. Letter dated April 28, 1906, W. A. Richards, Commissioner of U. S. Land Office.

7. U. S. Survey P. R. Byrnes No. 572.
9. Photograph view of terminal grounds.
10. View of terminal grounds looking toward Martin island.
11. View of terminal grounds showing camp.
12. Photographic view of terminal grounds, showing dismantled pile-driver.
13. View of terminal grounds and plaintiff's structures thereon.
14. View of plaintiff's sawmill.
15. Panoramic view terminal tract No. 1-B. showing contour of ground to the rear thereof.
16. Official bulletin U. S. Geological survey No. 314 series A Economic Geology No. 94. Pages 89 to 103, inclusive.
17. Copy protest Copper River & Northwestern Railway Co. against terminal tract No. 1-B before General Land Office.
18. U. S. Geological Survey, Topography Controller Bay, region, Alaska.
19. Preliminary survey Alaska Pacific Railway and Terminal Co. Bering Lake & Copper River division.
20. Certified copy amended articles of incorporation Alaska Pacific Railway & Terminal Co.
21. Certified copy articles of incorporation Copper River and Northwestern Railway Company.

DEFENDANTS' EXHIBITS.

1. Condensed profile of proposed route from confluence of Chitna and Copper river to Katalla, Cordova and Valdez, Alaska.
2. Map showing crossing Copper River Line terminal tract 1-B, A. P. R. Y. & T. Co. at Katalla.
3. U. S. Coast & Geodetic preliminary chart Controller Bay, Alaska.
4. Photograph showing Martin island and portion of tract 1-B near point of intersection.
5. Photograph showing portion of terminal tract 1-B near point of intersection.
6. Photograph showing contour of ground vicinity terminal tract 1-B.
7. Photograph showing portion terminal tract 1-B.
8. Deed Alaska Petroleum & Coal Company to Copper River & Northwestern Railway Company.
9. Abstract title of Oil King.
10. Abstract of title Standard Oil oil claim.
11. Deed M. W. Brunder to Alaska Petroleum & Coal Co.
12. Incorporation and qualification papers except amended articles Alaska Pacific Railway & Terminal Co.
13. Blue print plat terminal tract No. 1-B showing intersection and proposed route Copper River & Northwestern across said tract.

All the foregoing exhibits being on file with the Clerk of the District Court Division No. 1, Alaska.

I hereby certify that the foregoing is a full true, and correct transcript of the testimony taken in the foregoing cause by me on the days stated there.

G. A. JEFFERY,  
Official Stenographer.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),

Plaintiff,

vs.

THE COPPER RIVER & NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Complaint.**

Comes now the plaintiff above named, and complaining of the defendants, alleges:

I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and has, pursuant to the pro-

visions of an Act of Congress, approved May 14, 1898, entitled, "An Act Extending the Homestead Law and Providing for the Right of Way for Railroads in the District of Alaska and for other purposes," duly filed for record with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization.

II.

That the defendant, the Copper River and Northwestern Railway Company, is a corporation, and

III.

That the defendant, the Katalla Company, is a corporation, and

IV.

That the defendant, M. K. Rogers, is now the chief executive agent and the person having charge of the operations of the said The Copper River & Northwestern Railway Company and the said Katalla Company.

V.

That on or about the 3d day of March, 1906, this plaintiff duly caused to be filed with the General Land Office, Washington, D. C., a preliminary map and survey for the location of its right of way for a railroad, its terminal, and other grounds pursuant to the provisions of the Act of Congress, approved May 14, 1898, entitled, "An Act Extending the Home-

stead Law and Providing for the Right of Way for railroads in the District of Alaska and for other Purposes," and prior to said time caused an actual survey to be made upon the ground of a certain terminal tract, known in the said preliminary map, and described therein, as terminal tract No. 1 B, "which said terminal tract contained 39.54 acres, and was situated on the shores of Controller Bay in a northerly direction from a certain island known and described as Whale Island, and that the boundaries of said terminal tract No. 1 B, were clearly defined upon the ground and fully described in the said preliminary survey, and that the following is a description of the said terminal tract No. 1 B:

Beginning at Corner No. 1 Tract 1-A (Amended), a Greenstone rock 18x14x8 inches, set 12 in. in the ground, on the north end of Whale Island, in about Latitude 60°-11' N. and Longitude 144°-36' W. marked "x Cor. 1 A. P. R. T. Co. T-1-A," from which, A spruce 16" diameter bears N. 82°-11' W. 96.30 feet, A spruce 10" diameter bears S. 73°-23' W. 126.00 feet, both marked "A. P. R. T. Co. Cor. 1 x T-1-A. B. T.," Corner No. 1 of the original survey of this tract bears N. 77°-43' E. 271.27 feet, Corner No. 1 of Terminal Tract 1-B bears N. 13° 20" E. 2326.89 feet. U. S. L. M. No. 572, bears s. N. 77°-06' E. 5642.45 feet; The Initial Point of the company's definite location railroad survey bears



S. 67°-04' W. 184.42 feet, an area of 9.778 acres, and no more, Also—Beginning at Corner No. 1 Tract 1-B, a sandstone 24x12x8 inches marked "x T-1-B Cor. 1. A. PP R. T. Co.," from which, A spruce 6" diameter bears N. 8°-35' W. 12.08 feet. U. S. L. M. No. 572 bears S. 78°-35' E. 5064.29 feet. Corner No. 1, Terminal Tract 1-A bears S. 13°-20' W. 2326.81 feet. Witness Corner to Corner 1. Survey No. 572 bears S. 86°-07' W. 362.18 feet initial point of definite location of the Railroad Company's survey bears S. 16°-48' W. 2442.34 feet. Witness Corner to this Corner bears North 70.90 feet, A sandstone 22x14x10 inches, 16" in the ground, marked "x W. C. Cor. 1, T-1-B A. P. R. T. Co.," an area of 39.54 acres, a total area of 49,318 acres.

That thereafter the survey of the said terminal tract No. 1-B above described, was duly accepted and approved by the proper officers of the Department of the Interior of the United States on the 2d day of July, 1906, and that further the said preliminary survey of the said Alaska Pacific Railway & Terminal Company, above referred to, was duly approved by the proper officers of the Department of the Interior of the United States, and that within twelve months after the filing of the said preliminary survey or map of location, the plaintiff duly filed with the Register of the Land Office of the District of Alaska, at Juneau, Alaska, a map and profile of a twenty

(20) mile section of its road as definitely fixed; that said map of definite location included not only a map and profile of its proposed right of way from Controller Bay to a point twenty miles northeast, known as the map of definite location of the Katalla and Bering Lake junction, from a point on Whale Island to a point on Shepherd's Creek, but also contained and exhibited a map and survey of said terminal tract No. 1-B, hereinbefore described, which was clearly defined upon said map and made a part of the same, and that thereafter and on the 18th day of March, 1907, the Secretary of the Department of the Interior of the United States, duly approved said map of definite location, including the said map and location of said terminal tract No. 1-B.

## VI.

That said terminal tract No. 1-B was duly surveyed, described and located upon the said ground and in connection with the said survey for the right of way of the plaintiff company for the purpose of providing a terminal point and switching ground, or railroad yard, for the terminal for the said plaintiff company at tide water upon Controller Bay, and that the grounds contained within the exterior boundaries of the said terminal tract No. 1-B were and are actually and through the entire extent required by the plaintiff company for the necessary uses contemplated by the said Act of Congress, approved May 14,

1898, and plaintiff intends to use the said terminal tract No. 1-B for terminal purposes, as above alleged, and intends to construct a railroad yard, including a number of switches and other necessary terminal structures thereupon.

### VII.

That long after the said preliminary location and filing of the plaintiff of its preliminary survey and of its survey of terminal tract N. 1-B, the defendant, The Copper River & Northwestern Railway Company, assumed and pretended to locate a certain location of preliminary right of way across the said terminal tract No. 1-B, and transversely across the plaintiff's right of way and across the said proposed railroad yard and switching ground so as to necessarily cross each one of the switches and terminal tracks of the plaintiff, when constructed thereon, which said pretended right of way of the defendant, The Copper River & Northwestern Railway Company, is more specifically indicated by the plat annexed hereto and marked exhibit "A," showing the location of the said terminal tract No. 1 B, and made a part hereof, and which said pretended location is indicated by a red ink line extending across the said terminal tract from points P to P', as indicated upon the said map or plat marked exhibit "A."

### VIII.

The said The Copper River and Northwestern

Railway Company, defendant, and the said Katalla Company, defendant, and the said M. K. Rogers, acting together with the intention of crossing the said terminal tract, have cut out a right of way on the west side of the said terminal tract up to or about to the point P', and on the easterly side of the said terminal tract have driven piling and partially constructed the substructure of a railroad, and are engaged in the actual construction of a railroad up to or near the point P, as indicated upon said exhibit "A," and that the said defendants further threaten and will, unless prevented by the process of this Court, enter upon said terminal tract No. 1 B, and construct across the same, as indicated upon said map, exhibit "A," a line of railway.

#### IX.

That the said line of railway so constructed as threatened by the defendant railroad corporation will interfere with the construction of the switches and other terminal facilities proposed by this plaintiff to be erected upon said terminal tract No. 1 B, and will destroy the usefulness of the said tract as a switching ground or for terminal purposes at all, and that thereby this plaintiff will be hampered and interfered with in the proper progress of the construction of its said terminals and with the handling of its materials and supplies at the said terminal point, and further, with the handling of its supplies destined for

the construction of its line of road from Controller Bay to points in the interior of Alaska, and that if the said defendants are suffered or permitted to establish their line of railway across the said terminal tract, its usefulness as a terminal tract will be destroyed; that the plaintiff is without plain, speedy and adequate remedy at law, and will suffer great and irreparable injury unless the defendants, and each of them, their agents, servants, and employees are restrained and enjoined from constructing any line or lines of railway across the said terminal tract, and that the plaintiff will suffer great and irreparable damage which cannot be calculated or estimated unless the defendants are restrained and enjoined from entering upon or trespassing upon the said terminal tract No. 1 B.

Wherefore, plaintiff prays,

First: That an order be made and entered herein requiring defendants, and each of them, to appear before the Judge of this Court, now sitting at Juneau, Alaska, upon a certain day to show cause why they should not be restrained and enjoined from in any wise entering upon or encroaching upon the said terminal tract No. 1 B, and from in anywise erecting any structures for railroad purposes, or otherwise, upon said tract, and that they may be enjoined in the meantime from so doing until the hearing of the said order to show cause.

Second: That the plaintiff be adjudged the owner of and entitled to the possession of all the land within the exterior boundaries of said tract No. 1 B, and that upon the trial of this suit, a decree be made and entered herein perpetually enjoining the defendants, and each of them, their agents, servants and employees and all persons working under them from interfering with the exclusive right and enjoyment of the plaintiff herein to the possession of the land included within the exterior boundaries of the said tract No. 1 B, and for such other and further relief as to the Court may seem meet and proper.

HAROLD PRESTON,

SHACKLEFORD & LYONS and

F. M. BROWN,

Attorneys for Plaintiff.

United States of America,  
District of Alaska,—ss.

I, S. A. D. Morrison, being first duly sworn, on oath say: That I as the vice-president of the plaintiff corporation, in the above-entitled action; that I have read the foregoing complaint and know the contents thereof and believe the same to be true; that I make this verification because the president of said corporation is now without the District of Alaska.

S. A. D. MORRISON.



Se  
of ar  
the  
that  
ente  
and  
ploy  
inte  
the  
clud  
trac  
as t

Uni  
Dis

I  
oat  
tiff  
hav  
ten  
I r  
sai  
ask



Subscribed and sworn to before me this 9th day of  
May, A. D. 1907.

[Seal]

T. R. LYONS,  
Notary Public for Alaska.

[Endorsed]: Original. No. 623-a. In the Dis-  
trict Court for the District of Alaska, Division No.  
1, at Juneau. Alaska Pacific Railway & Terminal  
Co. Plaintiff, vs. The Copper River & Northwestern  
Railway Company et al., Defendant. Complaint  
Filed May 9, 1907. C. C. Page, Clerk. By E. W.  
Pettit, Asst. Harold Preston, Shackelford & Lyons  
& F. M. Brown, Attorneys for Plaintiff. Office  
Juneau, Alaska.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Motion to Show Cause.**

Comes now the Alaska Pacific Railway and Terminal Company, by its attorneys of record, and moves the Court for an order requiring the defendants above-named, and each of them, to appear before the Honorable James Wickersham, Judge of the District Court for the District of Alaska, now sitting at Juneau, Alaska, upon a day certain named in said order, to show cause why they should not be restrained and enjoined from in any wise entering upon or encroaching upon that certain terminal tract described in the plaintiff's complaint, and in the maps of location as "Terminal Tract No. 1 B," and from in anywise erecting any structures for railroad purposes, or otherwise, upon said tract, and for an order restraining them in the meantime from so doing until the hearing and determination of the said order to show cause.

The foregoing motion is based upon the complaint of the plaintiff herein, the records and files, and the affidavit of S. A. D. Morrison on file herein.

HAROLD PRESTON,  
SHACKLEFORD & LYONS and  
F. M. BROWN,

Attorneys for Plaintiff.

[Endorsement]: Original. No. 2. In the District Court for the District of Alaska, Division No.

1, at Juneau. Alaska Pacific Railway & Terminal Co., Plaintiff, vs. The Copper River & Northwestern Railway Company, et al., Defendants. Motion. Filed May 9, 1907. C. C. Page, Clerk. By E. W. Pettit, Asst. Harold Preston, Shackelford & Lyons, and F. M. Brown, Attorneys for Plaintiff. Office. Juneau, Alaska.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,  
Defendants.

**Affidavit of S. A. D. Morrison.**

United States of America,  
District of Alaska,—ss.

S. A. D. Morrison, being first duly sworn, on oath deposes and says: I am the vice-president of the Alaska Pacific Railway and Terminal Company, the plaintiff named in the above-entitled action; that I

have been in charge of the survey and construction work of the plaintiff company, from its terminals near Katalla, Alaska, into the interior of Alaska for the past three years; that I am acquainted with the location of the right of way referred to in plaintiff's complaint and with the location of the terminal tract No. 1 B, described in the plaintiff's complaint.

That the plaintiff corporation has expended \$60,000.00, or more, in surveys upon its proposed line of railroad, and in addition thereto, has expended in excess of \$100,000.00 in supplies, equipment and labor since the first work done in connection with the location of said road; that the said company now has at, on and in the vicinity of its right of way about two hundred men employed on the ground, in survey and construction work, and has landed at and near its terminals, near Katalla, Alaska, and has on the ground, some five sawmills, one already erected and ready for work in and upon the construction of the said road, has six logging engines for logging and the manipulation of scrapers and six pile-drivers upon the ground, and various other machinery and tools necessary for the construction of the said railroad, and has been and is now proceeding in good faith in the work necessary to the construction of its railroad, from its terminals on Controller Bay in a northerly direction, as indicated by its various maps of location filed pursuant to the Act of Congress, approved May 14, 1898, entitled, "An Act Ex-

tending the Homestead Law and Providing for the Right of Way for Railroads in the District of Alaska and for other Purposes"; that in addition to the equipment above mentioned, rails for nine miles of the said road have already been ordered, and that a large consignment of construction rail is already on hand for use in the construction of said line of railway; that a considerable amount of sub-structure for the railway upon the southerly portion of the said terminal tract has been driven and caps laid thereon, and a considerable amount of piling and sub-structure has been driven between the said terminal tract No. 1-B, as indicated upon exhibit "A," attached to the plaintiff's complaint, and terminal tract No. 1-A; that it is the purpose and intention of the plaintiff company to construct and lay upon said terminal tract No. 1-B a series of switches for terminal purposes, running in a northerly and southerly direction, through said terminal tract No. 1-B, and that the same will constitute the principal railroad yard of the plaintiff company, and it is further proposed to erect such necessary station ground, round house and shops thereon as will be required in the construction, maintenance and operation of said railroad.

That the defendants, The Copper River & Northwestern Railway Company, a corporation, The Kattalla Company, a corporation, and M. K. Rogers,

have laid out and declared their intention to cross the said terminal tract No. 1-B, along the line indicated upon exhibit "A," attached to the plaintiff's complaint and designated between the points P. and P', and the said defendants have cut out a right of way on the westerly side of the said terminal tract No. 1-B and have erected a sub-structure for a railroad on the easterly side of the terminal tract No. 1-B, and have notified the plaintiff herein that they intend to cross said terminal tract from east to west, along the line indicated at point P' on said exhibit "A"; that the erection of such a railroad track along said line across the said terminal tract No. 1-B will destroy the value of the said terminal tract as a switching yard and terminal point, and will prevent the use of said tract in a practical manner for terminals.

That I have seen the original letter of R. A. Ballinger, Commissioner to the General Land Office, on file in the office of the Register and Receiver of the Land Office at Juneau, Alaska, advising them that the map of definite location of the Katalla and Bering Lake Division, from a point on Whale Island 20 miles northeast to a point on Shepherd's Creek, was approved by the Secretary of the Interior, on the 18th of March, 1907.

S. A. D. MORRISON.

Subscribed and sworn to before me this 9th day of May, 1907.

[Notarial Seal of T. R. Lyons]

T. R. LYONS,  
Notary Public in and for Alaska.

[Endorsement]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Co., Plaintiff, vs. The Copper River & Northwestern Railway Company, et al., Defendants. Affidavit of S. A. D. Morrison. Filed May 9, 1907. C. C. Page, Clerk. E. W. Pettit, Asst. Harold Preston, Shackelford & Lyons, and F. M. Brown, Attorneys for Plaintiff. Office: Juneau, Alaska.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Affidavit of S. A. D. Morrison.**

United States of America,  
District of Alaska,—ss.

S. A. D. Morrison, being first duly sworn, on oath deposes and says: That the terminals of the Alaska Pacific Railway and Terminal Company, mentioned in the complaint on file herein, are situated on Controller Bay, a point distant from Juneau, approximately, 450 miles; that of the three judges of the District Court for the District of Alaska, one is at Nome, Alaska, at the present time, as affiant is informed and believes, one is at Fairbanks, Alaska, as affiant is informed and believes, both much more remote from said terminal sites than the Honorable Judge James Wickersham, who is now sitting in Juneau, Alaska. That the officers of the defendant companies, upon whom service of process and an order to show cause herein may be had, are at Controller Bay and in the vicinity of the said terminals, and that it will be impossible to procure service upon them and secure a return thereof and their appearance before this Court at Juneau, Alaska, prior to the 4th or 5th day of June; that as already shown by the affidavit and the complaint on file herein, the defendants are nearly up to the side lines of the terminal tract No. 1-B mentioned in the said



complaint, and have declared their intention of crossing the said terminal tract.

That affiant has instructed the agents and employees of the plaintiff company, if possible, to prevent the defendants from entering upon said tract, and affiant says that unless an order is issued by this Court enjoining the defendant companies from encroaching upon said tract pending the return of an order to show cause herein, there is every reasonable probability that a conflict over the possession of a portion of the said tract will take place and that the damage threatened by the defendants' companies will have accrued and that the hearing of an order to show cause without such preliminary restraining order would prove fruitless and without avail. That affiant and plaintiff company have been advised by counsel that they have the right to prevent the entry upon said terminal tract of the defendant companies, if necessary, by use of force, and that this application is made in order to procure an order of the Court which may prevent any conflict between the parties plaintiff and defendant; and further, that no material damage can be done to the defendant companies by delaying their intended crossing of the said terminal tract until the application for an injunction pendente lite can be heard before this Court upon the return of an order to show cause.

Affiant is informed and believes and states that the first boat from Controller Bay to Juneau, Alaska, which can bring the parties defendant before this Court after the service of an order to show cause, will be the steamer Portland, which will in all probability not reach this port from the vicinity of Controller Bay until about the 4th or 5th of June.

S. A. D. MORRISON,

Subscribed and sworn to before me this 11th day of May, 1907.

T. R. LYONS,

Notary Public in and for Alaska.

[Endorsement]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Ry. & Terminal Co., Plaintiff, vs. The Copper River & Northwestern Ry. Co., et al., Defendants. Affidavit of S. A. D. Morrison. Filed May 11, 1907. C. C. Page, Clerk. E. W. Pettit, Asst. Harold Preston, Shackelford & Lyons, and F. M. Brown, Attorneys for Plaintiff. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,  
Division No. 1.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Summons.**

To the Copper River and Northwestern Railway  
Company, Katalla Company, and M. K. Rogers,  
Defendants, Greeting:

In the Name of the United States of America.  
You are hereby commanded to be and appear in the  
above-entitled court, holden at Juneau in said Divi-  
sion of said District, and answer the complaint filed  
against you in the above-entitled action within thirty  
days from the date of the service of this summons  
and a copy of the said complaint upon you, and if  
you fail to so appear and answer, for want thereof  
the plaintiff will apply to the Court for the relief

demanded in said complaint, a copy of which is served herewith.

And you, the United States Marshal of Division No. 3 of the District of Alaska, or any deputy are hereby required to make service of this summons upon the said defendant and each of them as by law required and you will make due return hereof to the clerk of the Court within forty days from the date of delivery to you with an indorsement hereon of your doings in the premises.

In witness whereof I have hereto set my hand and affixed the Seal of the above Court this 13 day of May, A. D. 1907.

C. C. PAGE,  
Clerk.

United States of America,  
Territory of Alaska,—ss.

I hereby certify that the within summons and complaint came into my hands for service on the 20th day of May, 1907, and that R. J. Boryer duly authorized attorney for all defendants duly accepted service of said summons and complaint for all of said defendants and I delivered to said attorney two full, true and complete copies of said summons and complaint at Katalla, Alaska, on the 20th day of May,

A. D. 1907, and I further certify that the signature of said attorney on said acceptance is genuine.

GEORGE G. PERRY,

U. S. Marshal.

By James Warddell,

Deputy.

Received copy of within summons and complaint the 20th day of May, A. D. 1907, at Katalla, Alaska.

BOGLE, HARDIN & SPOONER,

By R. J. BORYER,

Duly Authorized Attorneys for Defendants.

[Endorsed]: No. 623-A. In the District Court of the United States for the District of Alaska, Division No. 1. Alaska Pacific Railway & Terminal Company, vs. The Copper River & Northwestern Railway Company, et al. Summons. Filed Jun. 1, 1907. C. C. Page, Clerk. Robertson, Asst.

---

**Telegram to Judge Wickersham.**

RECEIVED AT

19 SI C CH X V 60 Paid 5 Extra,

Katalla, Alaska, May, 22, via Valdez, Alaska, May 24, 1907.

Hon. James Wickersham, Juneau, Alaska.

Alaska Pacific Railroad in actual peaceable possession of terminal ground Rogers Company threatening forcible entry. Trespass case dismissed

by Commissioner on ground Alaska Pacific Company has no rights because no proofs here of compliance with corporation laws conflict inevitable in few days. Wire injunctinal orders to Marshal at Valdez to serve immediately condition very serious.

F. M. BROWN.

2:14 Pm.

[Endorsement]: 623-A. Alaska Pacific & Terminal Railway Co., vs. The Copper River & Northwestern Railway Co. and M. K. Rogers. Telegram to Judge Wickersham. Filed May 25, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation), KA-  
TALLA COMPANY (a Corporation), and M.  
K. ROGERS,

Defendants.

**Order to Show Cause.**

This motion coming on ex parte upon application of the plaintiff, the Alaska Pacific Railway and Terminal Company, a corporation, for an order requiring the defendants, The Copper River and Northwestern Railway Company, a corporation, the Kattalla Company, a corporation, and M. K. Rogers, to appear before the undersigned, Judge of the District Court for the District of Alaska, now sitting at Juneau, Alaska, upon a day certain, to show cause why they should not be restrained and enjoined from in any wise entering upon or encroaching upon that certain terminal tract mentioned in the plaintiff's complaint, and described in surveys of location of the plaintiff company as "Terminal Tract No. 1-B," and from in any wise erecting any structures for railroad purposes, or otherwise, upon said tract, and for an order restraining the said defendants from so doing until the hearing of this order, and the plaintiff appearing by its attorneys of record, Messrs. Shackelford & Lyons, and the Court being fully advised in the premises,

Now, therefore, it is ordered that the defendants above-named, and each of them, be and appear before the Honorable James Wickersham, Judge of the District Court for the District of Alaska, at Juneau, Alaska, upon the 5th day of June, 1907, and then and

there show cause why they, and each of them, their agents, servants, and employees, and all persons working under them, should not be restrained and enjoined from in any wise entering upon or encroaching upon that said terminal tract, on the shores of Controller Bay, described in the plaintiff's complaint and in the maps of location as "Terminal Tract No. 1-B," and further to show cause, if any, why they should not be enjoined and restrained from in any wise erecting any structure for railroad purposes, or otherwise, upon said tract, but said application for restraining order, pending this order to show cause, is hereby denied.

And it is further ordered that a certified copy of this order be delivered to the defendants, and each of them, by the United States Marshal for the Third Division of the District of Alaska, or any of his deputies, with all convenient speed, and that the said Marshal, or any of his deputies, make due return upon the original of this order, which shall be transmitted with all convenient speed, together with the certified copies mentioned above, to the said United States Marshal for Division Number Three, or any of his deputies.

Done in open court this 13 day of May, 1907.

JAMES WICKERSHAM,

Judge.



Due service of a copy of the within order is admitted this 20 day of May, 1907, at Catalla, Alaska.

BOGLE, HARDEN & SPOONER,

Duly Authorized Attys.

By R. J. BORYER,

Atty. for Defendants.

United States of America,  
Territory of Alaska,—ss.

I hereby certify that the within order came into my hands for service on the 20th of May, A. D. 1907, and that R. J. Boryer, duly authorized attorney for all defendants, duly accepted service of said order for all of said defendants, and I delivered to said attorney two full, true and complete copies of said order at Katalla, Alaska, on the 20th day of May, A. D. 1907. And I further certify that the signature of said attorney on said acceptance is genuine.

GEORGE G. PERRY,

U. S. Marshal,

By James Warddell, Deputy.

[Endorsed]: Original. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway and Terminal Co., Plaintiff, vs. The Copper River & Northwestern Railway Co. et al., Defendants. Order. Filed Jun. 1, 1907. C. C. Page, Clerk. By Robertson, Asst. Clerk. Harold Preston, Shackelford, & Lyons, and F. M.

Brown, Attorneys for Plaintiff. Office, Juneau, Alaska.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation), KA-  
TALLA COMPANY (a Corporation), and M.  
K. ROGERS,

Defendants.

**Amended Complaint.**

Comes now the plaintiff above-named, and complaining of the defendants alleges:

I.

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and for the purpose, among other purposes, and with the power, among other powers, to lay out, construct, furnish and equip a railroad line and railroad from a point on the northern part of Martins Island, in the District of Alaska,

by some practicable, convenient route, in a northerly direction from the Pacific Ocean, or some bay or inlet thereof, to a point at or near Eagle City on the Yukon River, and to maintain and operate the same, and has, pursuant to the provisions of an act of Congress, approved May 14, 1898, entitled "An Act extending the homestead law and providing for the right of way for railroads in the District of Alaska and for other purposes," duly filed for record with the Secretary of the Interior a copy of its articles of incorporation and due proofs of its organization, and the same have been accepted by the said Secretary of the Interior.

II.

That the defendant, The Copper River and Northwestern Railway Company, is a corporation, and

III.

That the defendant, the Katalla Company, is a corporation, and

IV.

That the defendant, M. K. Rogers, is now the chief executive agent and the person having in charge the operations of the said The Copper River and Northwestern Railway Company and the said Katalla Company.

V.

That on or about the 3d day of March, 1906, this plaintiff duly caused to be filed with the General Land

Office, Washington, D. C., a preliminary map and survey for the location for its right of way for a railroad, its terminal, and other grounds, pursuant to the provisions of the act of Congress, approved May 14, 1898, entitled "An Act extending the homestead law and providing for the right of way of railroads in the District of Alaska and for other purposes," and prior to said time caused an actual survey to be made upon the ground of a certain terminal tract, known in the said preliminary map and described therein as "Terminal Tract No. 1-B," which said terminal tract contained 39.54 acres, and was situated on the shores of Controller Bay, in a northerly direction from a certain island known and described as Whale (or Martins) Island, and that the boundaries of said terminal tract, No. 1-B, were clearly defined upon the ground and fully described in the said preliminary survey, and that the following is a description of the said terminal tract No. 1-B:

Beginning at Corner No. 1, a Stone marked 24x12x8 inches set 14 inches in the ground, marked "Corner 1. T-I-B A. P. R. T. Co.," on the shore of the main land, on the Gulf of Alaska or Katalla Bay, north of Whale Island, from which a spruce tree 6" diameter bears N. 8° 35' West 12.08 feet and U. S. Location Monument No. 572 bears S. 78° 33' East 5064.29 feet, thence north 1550 feet to Corner No. 2, thence West 1187.29 feet to Corner No. 3, thence South 1150.13

feet to the shore line of the Gulf of Alaska, or Katalla Bay; thence along the shore line S. 55° 45' E. 710.50 feet, and East 600 feet to the place of beginning. Containing 39.54 acres.

That thereafter the survey of the said terminal tract No. 1-B above-described was duly accepted and approved by the proper officers of the Department of the Interior of the United States on the second day of July, 1906, and that further the said preliminary survey of the said Alaska Pacific Railway and Terminal Company, above referred to, was duly approved by the proper officers of the Department of the Interior of the United States, and that within twelve months after the filing of the said preliminary survey or map of location, the plaintiff duly filed with the Register of the Land Office of the District of Alaska, at Juneau, Alaska, a map and profile of a twenty-mile section of its road as definitely fixed; that said map of definite location included not only a map and profile of its proposed right of way from Controller Bay to a point twenty miles northeast, known as the map of definite location of the Katalla and Bering Lake Junction, from a point on Whale (or Martins) Island to a point on Shepherd's Creek, but also contained and exhibited a map and survey of said terminal tract No. 1-B, hereinbefore described, which was clearly defined upon said map and made a part of the same, and that thereafter and on

the 18th day of March, 1907, the Secretary of the Department of the Interior of the United States duly approved said map of definite location, including the said map and location of said terminal tract No. 1-B.

## VI.

That said terminal tract No. 1-B was duly surveyed, described and located upon the said ground and in connection with the said survey for the right of way of the plaintiff company for the purpose of providing a terminal point and switching ground, or railroad yard, for the terminal for the said plaintiff company at tide water upon Controller Bay, and that the grounds contained within the exterior boundaries of the said terminal tract No. 1-B were and are actually and through the entire extent required by the plaintiff company for the necessary uses as a terminal tract contemplated by the said act of Congress, approved May 14, 1898, and plaintiff intends to use the said terminal tract No. 1-B for terminal purposes, as above alleged, and intends to construct a railroad yard, including a number of switches and other necessary terminal structures thereupon.

That ever since the month of June, 1905, the plaintiff has been in the actual, notorious and uninterrupted possession of said terminal tract No. 1-B, and said right of way for 100 feet on each side of the lines of said road passing through said terminal tract as indicated on said maps of preliminary and definite

location, and that the plaintiff corporation has expended some sixty thousand dollars (\$60,000) or more upon surveys upon its proposed line of railroad, and in addition thereto has expended in excess of one hundred thousand dollars (\$100,000) in the purchase of supplies, equipment and in the payment of labor since the first work done in connection with the location of said railroad at said terminal point, and that the said company now has, at, on and in the vicinity of the said terminal tract No. 1-B and said right of way about two hundred men employed in survey and construction work, and has landed at and near its said terminals and has on and near the ground five sawmills, one sawmill already erected and in operation, seven pile-drivers, six logging engines and accompanying outfits for logging and the manipulation of scrapers and various other machinery, tools and hardware for the construction of said railroad, and had been and now is proceeding in good faith in the work necessary to the construction of its railroad, from its terminals on Controller Bay in a northerly direction as indicated upon the said map of definite location, and has on hand a large amount of construction rail, and in addition thereto has purchased rails for nine miles of said railroad; that a considerable amount of substructure for the said railroad upon the southerly portion of the said terminal tract has been driven and caps laid thereon and a considerable

amount of clearing has been done upon said terminal tract No. 1-B and right of way, and that it is the purpose and intention of the plaintiff company to construct and lay upon said terminal tract No. 1-B, in a northerly and southerly direction, through said terminal tract No. 1-B, a number of side tracks, switches and other necessary structures for terminal facilities, and that the same will, when constructed, be and constitute the principal terminal yard of the plaintiff company upon the Pacific Coast, and that it is the purpose and intention of the plaintiff to erect thereon necessary stations, roundhouses and shops, as will be required in the construction and maintenance and operation of said railroad line; that the plaintiff has on hand a large amount of timbers and iron work necessary for bridge and trestle construction, and that the said terminal tract No. 1-B will constitute the principal base of operation, not only in the operation of said railroad, after the same is constructed, but in the construction of the same, and that the uninterrupted possession of said terminal tract No. 1-B and right of way are requisite and necessary to the progress of the construction of the said railroad line, as required by the said act of Congress of May 14, 1898.

## VII.

That long after the said preliminary location and filing of the plaintiff of its preliminary survey and



of its survey of terminal tract No. 1-B, the defendant, the Copper River & Northwestern Railway Company, assumed and pretended to locate a certain location or preliminary right of way across the said terminal tract No. 1-B, and transversely across the plaintiff's right of way and across the said proposed railroad yard and switching ground so as to necessarily cross each one of the switches and terminal tracks of the plaintiff, when constructed thereon, which said pretended right of way of the defendant, the Copper River and Northwestern Railway Company, is more specifically indicated by the plat annexed to the original complaint herein and marked exhibit "A," showing the location of the said terminal tract No. 1-B, and made a part hereof, which said pretended location is indicated by a red ink line extending across the said terminal tract and railroad right of way from points P to P', as indicated upon the said map or plat defendant, and the said M. K. Rogers, acting together marked exhibit "A."

#### VIII.

The said Copper River and Northwestern Railway Company, defendant, and the said Katalla Company, with the intention of crossing the said terminal tract and right of way, have cut out a right of way on the west side of the said terminal tract up to or about to the point of P', and on the easterly side of the said terminal tract have driven piling and partially con-

structed the substructure of a railroad, and are engaged in the actual construction of a railroad up to or near the point P, as indicated upon said exhibit "A," and that the said defendants further threaten and will, unless prevented by the process of this court, enter upon said terminal tract No. 1-B and upon the right of way and within 100 feet of the line of plaintiff's railroad, passing through said tract, as shown on exhibit "A" and the said maps of preliminary and definite location, and construct across the same, as indicated upon said map, exhibit "A," a line of railway.

That on the 16th day of May, 1907, the defendants entered upon the said terminal tract No. 1-B and right of way, and within 100 feet on each side of plaintiff's line of locations passing through said tract, and commenced to blast upon said tract, to dig trenches therein with a large force of men and to excavate and cut down trees, building and constructing a railroad grade thereon, and have blown logs, stumps and other material upon some of the tents, buildings and structures occupied by the plaintiff and its employees, and the said defendants have been repeatedly notified and warned to cease and desist from said work and to remove and remain away from said terminal tract No. 1-B, and that said defendants have refused so to do and continue from day to day to re-enter upon said tract and blast in the manner

above described, and have also entered upon the easterly portion of said tract and within 100 feet of the lines of survey indicated on said map, being plaintiff's right of way, with a pile-driver for the purpose of erecting a substructure for a railroad right of way, and are continuing to enter upon said tract and right of way recklessly with a large force of men in total disregard of the plaintiff's rights in the premises and threaten to continue so to do.

### IX.

That the said line of railway so constructed as threatened by the defendant railroad corporation will interfere with the construction of the switches and other terminal facilities proposed by this plaintiff to be erected upon said terminal tract No. 1-B and right of way for 100 feet on each side of the railroad line passing through said tract No. 1-B, and will destroy the usefulness of the said right of way and of the said tract as a switching ground or for terminal purposes at all, and that thereby this plaintiff will be hampered and interfered with in the proper progress of the construction of its said terminals and with the handling of its materials and supplies at the said terminal point destined for the construction of its line of road from Controller Bay to points in the interior of Alaska, and that if the said defendants are suffered or permitted to estab-

lish their line of railway across the said terminal tract and right of way, its usefulness as a terminal tract will be destroyed; that the plaintiff is without plain, speedy and adequate remedy at law, and will suffer great and irreparable injury unless the defendants, and each of them, their agents, servants and employees are restrained and enjoined from constructing any line or lines of railway across the said terminal tract and over plaintiff's right of way for 100 feet on each side of the railway lines running through said tract, and that the plaintiff will suffer great and irreparable damage which cannot be calculated or estimated unless the defendants are restrained and enjoined from entering upon or trespassing upon the said terminal tract No. 1-B and said right of way.

Wherefore, plaintiff prays:

(1) That an order be made and entered herein requiring defendants, and each of them, to appear before the Judge of this court, now sitting at Juneau, Alaska, upon a certain day to show cause why they should not be restrained and enjoined from in any wise entering upon or encroaching upon the said terminal tract No. 1-B and right of way for 100 feet on each side of the lines passing through said tract No. 1-B, and from in any wise erecting any structure for railroad purposes, or otherwise, upon said tract and right of way, and that they may be enjoined in

the meantime until the hearing of the said order to show cause.

(2) That the plaintiff be adjudged the owner of and entitled to the possession of all the land within the exterior boundaries of said tract No. 1-B, also of the right of way for 100 feet on each side of lines of railroad, as indicated on said map and passing through said tract, and that upon the trial of this suit, a decree be made and entered herein perpetually enjoining the defendants, and each of them, their agents, servants and employees and all persons working under them from interfering with the exclusive right and enjoyment of the plaintiff herein to the possession of the land included within the exterior boundaries of the said tract No. 1-B, and said right of way for 100 feet on each side of the lines of railroad passing through said tract, and for such other and further relief as to the Court may seem meet and proper.

HAROLD PRESTON,  
F. M. BROWN,  
SHACKLEFORD & LYONS,  
Attorneys for Plaintiff.

United States of America,  
District of Alaska,—ss.

I, S. A. D. Morrison, being first duly sworn, on oath say: That I am the vice-president of the plain-

tiff corporation in the above-entitled action; that I have read the foregoing amended complaint and know the contents thereof and believe the same to be true; that I make this verification because the president of said corporation is now without the District of Alaska.

S. A. D. MORRISON.

Subscribed and sworn to before me this 5th day of June, A. D. 1907.

[Seal]

T. R. LYONS,  
Notary Public for Alaska.

United States of America,  
District of Alaska,—ss.

I, Louis P. Shackelford, one of plaintiff's attorneys, being first duly sworn, on oath depose and say: That on 5th June, 1907, I personally, and in person, delivered a copy of the foregoing amended complaint to W. H. Bogle in person at Juneau; that said W. H. Bogle is the attorney for each of the defendants herein.

LOUIS P. SHACKLEFORD.

Subscribed and sworn to before me this 5th June, A. D. 1907.

[Seal]

T. R. LYONS,  
Notary Public for Alaska.

[Endorsed]: 623-A. Original. No. 623-A. In the District Court for the District of Alaska, Divi-

sion No. 1, at Juneau. Alaska Pacific Ry. & Terminal Co., Plaintiff, vs. The Copper River & Northwestern Ry. Co. et al., Defendants. Amended Complaint. Filed June 5, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Harold Preston, Shackelford & Lyons and F. M. Brown, Attorneys for Plaintiff. Office: Juneau, Alaska.

---

*In the District Court for the District of Alaska, Division No. One, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL CO.,

Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY et al.,

Defendants.

**Order Setting Time for Hearing.**

Now, on this day it is ordered that the hearing of the order to show cause herein be set down for Thursday, June 6th.

Done in open court June 4, 1907.

JAMES WICKERSHAM,

Judge.

(Entered in Civil Journal E, for District Court for the District of Alaska, on Tuesday, June 4, 1907, page 208.)

---

*In the United States District Court of the District of Alaska, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY,

Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY, Inc., et al.,

Defendants.

**Affidavit of Charles S. Hubbell.**

State of Washington,  
County of King,—ss.

Charles S. Hubbell, being first duly sworn, upon his oath deposes and says: That he is now residing in Katalla, Alaska, and is a Deputy Surveyor in and for the District of Alaska; that he is familiar with the country in and around Katalla, and the location of the plaintiff's right of way and terminal grounds in and around Katalla, and at Whale or Martin Islands, where said plaintiff's terminal grounds are located; that said terminal grounds of the plaintiff



are situated about two and one-half ( $2\frac{1}{2}$ ) miles west of Katalla, in a pass or defile, said pass or defile and terminal grounds having to its left, going towards Katalla, a high chain of mountains, and to the right the Pacific Ocean; that the plaintiff's terminal ground and right of way is paralleled on the left by aforesaid high chain of mountains from its terminal grounds to a point below the starting point of the defendant's right of way, which begins at Palm Point, about one and a half ( $1\frac{1}{2}$ ) miles below the plaintiff's terminal grounds; that this affiant is familiar with the elevation and general contour of the country in and around said plaintiff's right of way and terminal grounds and the right of way of defendants' line, and states that it is practically impossible for the defendant company to construct or build and operate its road to its destination without crossing the terminal grounds of the defendant company, situated opposite Martin Islands in aforesaid mentioned pass.

CHARLES S. HUBBELL.

Subscribed and sworn to before me this the 29 day of May, A. D. 1907.

ROBERT J. BORYER,

Notary Public for State of Washington, Residing  
in Seattle.

[Endorsed]: 623-A. United States District  
Court, Western District of Alaska, at Juneau.

Alaska Pacific Railway & Terminal Company, Plaintiff, vs. Copper River & Northwestern Railway Company, Inc., et al., Defendants. Affidavit of Charles S. Hubbell. Filed Jun. 8, 1907. C. C. Page, Clerk. By E. W. Pettitt, Asst. Bogle, Hardin & Spooner, Attorneys for Defendants.

---

*In the District Court for the District of Alaska, Division Number One, at Juneau.*

No. — A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
THE KATALLA COMPANY (a Corporation), and M. K. ROGERS,  
Defendants.

**Answer.**

Come now the defendants, Copper River and Northwestern Railway Company, a Corporation, Katalla Company, a corporation, and M. K. Rogers, defendants in the above-entitled cause, and for answer to the amended complaint of the complainant herein, admit, deny and state as follows:

I.

They deny each and every allegation contained in paragraph numbered on of said amended complaint.

II.

They admit the allegations contained in paragraphs two, three and four of said amended complaint.

III.

They deny each and every allegation contained in paragraph numbered five of said amended complaint.

IV.

Answering the allegations of paragraph numbered six of said amended complaint, defendants deny that said tract of land described as Terminal Tract No. 1-B, in said amended complaint, was duly surveyed, described, or located upon said ground in connection with any survey of the right of way of said plaintiff company, or at all; deny that the grounds contained within the exterior boundaries of said tract were or are actually and to its entire extent required by the plaintiff company for its necessary uses as a terminal tract; they have not knowledge or information sufficient to form a belief as to whether the plaintiff intends to use said tract for terminal purposes or to construct a railroad yards or other structures thereon, and therefore deny said allegation; they deny that the plaintiff has been in the possession of said tract since the month of June,

1905, or at any other time whatever prior to the month of February, 1907, or that said plaintiff was ever in the possession of said tract of land at any time whatsoever except as hereinafter stated; defendants have not knowledge or information sufficient to form a belief as to what sum, if any, has been expended by plaintiff upon a survey of any proposed line of railroad, or in the purchase of supplies or equipment or in payment of labor in connection with any line of railroad at or near said tract of ground designated as Terminal Tract No. 1-B, and therefore deny the allegations in said paragraph contained in that behalf; defendants admit that plaintiff has in its employ at or near the said Katalla a number of men and certain machinery in the nature of sawmills, pile-drivers and logging engines, but they have no knowledge or information sufficient to form a belief as to the number of men employed or the nature of said supplies and equipment, and therefore deny the allegations of said amended complaint in that behalf;

Defendants deny each and every other or further allegation of said amended complaint in said sixth paragraph contained.

#### V.

Defendants admit that respondent, the Copper River and Northwestern Railway Company has located a right of way for a railroad across the said

tract of land described in said amended complaint as Terminal Tract No. 1-B, and across the right of way claimed by plaintiff for the railroad, which it alleges it intends to build, and that the location by the said defendant corporation across said tract is approximately as indicated on the plat marked Exhibit "A" attached to said amended complaint; but denies each and every other or further allegation in said paragraph numbered seven of said amended complaint contained.

VI.

Answering paragraph eight of said amended complaint, defendants admit that the Copper River and Northwestern Railway Company is engaged in constructing a railroad up to and across the tract of land described in said amended complaint as Terminal Tract No. 1-B and across the right of way claimed by the said plaintiff for the railroad, which, it alleges, it intends to build, at or near said tract referred to; but deny each and every other further allegation in said paragraph eight of said amended complaint contained.

VII.

Defendants deny each and every allegation in paragraph numbered nine of said amended complaint contained.

1.

And for a further separate and first affirmative defense, the defendants state and show:

## I.

The Copper River and Northwestern Railway Company is a corporation organized for the purpose of constructing a railroad in the District of Alaska, and has filed certified copies of its articles of incorporation and due proofs of its organization and of compliance by it with the laws relative to foreign corporations doing business in Alaska, with the Secretary of the Interior, and has in all respects complied with the requirements of the provisions of the Act of Congress approved May 14, 1898, and with the rules and regulations prescribed by the Secretary of the Interior or relative to the acquisition of rights of way for railroads in the District or Territory of Alaska, and has also complied with the provisions of chapter 23 of the Act of Congress approved June 6, 1900, relative to foreign corporations doing business in said District of Alaska.

## II.

That on the 26 day of January, 1907, said company filed with the Commissioner of the U. S. General Land Office at Washington, D. C., the map of preliminary survey of its line of railroad from Katalla, in said Alaska, to Martin River, which said survey crossed the grounds described in said amended complaint herein and designated therein as Terminal Tract No. 1-B; that said map was duly adopted by resolution of the Board of Directors of the Copper

River and Northwestern Railway Company as the preliminary location of its said railroad on the 8th day of January, 1907; that said map was duly transmitted to the General Land Office at Washington, D. C., and on March 22d, 1907, the same was accepted for filing in that office under the provisions of Sec. 4, Act of Congress approved May 14, 1898; that the survey upon which the said map and location was based was made by said Copper River and Northwestern Railway Company beginning September 10th, 1906, and was completed on December 8th, 1906.

That on the 5th day of March, 1907, the said defendant company, pursuant to the provisions of the Act of May 14, 1898, filed in the office of the Register and Receiver of the U. S. Land Office at Juneau, Alaska, its map of definite location of said line of railway from Katalla through said tract of land in said amended complaint described and designated as Terminal Tract No. 1-B to a point on Martin River, approximately twenty-nine miles from said Katalla.

### III.

That on or about the 23d day of November, 1901, W. E. Abernathy, M. W. Bruner and others located two certain Placer Oil Mining Claims covering all of the ground described in said amended complaint and designated therein as Terminal Tract No. 1-B; that location notices were duly posted upon said

land, and filed and recorded in the proper office in that district, and were based upon actual discovery of oil made by said locators on the 21st day of November, 1901; that said locators entered into possession of said tract of land, and that their grantees and successors in interest continued in the actual, open, notorious and exclusive possession thereof until some time during the month of February, 1907, and constructed buildings and other improvements thereon, and annually did and performed the assessment work required to maintain said mineral claims, and made and filed due proofs thereof; that the said W. E. Abernathy, M. W. Bruner and the other locators of said placer oil claims, by sundry means conveyances conveyed and sold both of said mineral claims to the Alaska Petroleum and Coal Company, which said last-named company has been the owner of both of said claims since June, 1903, and was in the open and exclusive possession thereof until forcibly dispossessed by the plaintiff, as hereinafter stated.

#### IV.

That the said two placer oil claims covering said tract are now and at all times since November 23d, 1901, have been, existing claims recognized by the proper authorities of the Land Department, uncanceled and free from contest.

#### V.

That on or about the 23d day of March, 1907, the



said Alaska Petroleum and Coal Company sold and conveyed to the Copper River and Northwestern Railway Company a right of way for its said railroad over and across said two placer oil mining claims and across the said tract of ground described in said amended complaint and designated Terminal Tract No. 1-B, said right of way so conveyed corresponding with the right of way located and shown upon the maps of preliminary and definite location of said Copper River and Northwestern Railway Company's railroad hereinbefore referred to.

## VI.

That said Alaska Petroleum and Coal Company and its predecessors in interest in said mining claims, erected several houses upon that part of said oil placer claims described in said amended complaint, and designated therein as Terminal Tract No. 1-B, and occupied the same with their employees during the entire open season for mining up to the winter of 1906-7; that said houses were furnished and fitted for habitation; that during the month of February, 1907, and in the absence of the officers and employees of the Alaska Petroleum and Coal Company, the said plaintiff, by its agents and employees, took forcible possession of said houses and furniture therein and thereafter held forcible possession of the same against the consent and protest of the said Alaska Petroleum and Coal Company, and that said

plaintiff has not at any time had possession of said premises prior to the said February, 1907, and the possession it has had since said date has been maintained by force and against the protest of the said Alaska Petroleum and Coal Company.

## VII.

That at the time of the said pretended survey by said plaintiff of the ground designated in said amended complaint as Terminal Tract No. 1-B, and at the time they pretended to file with the U. S. Land Office its pretended maps thereof, and at all times mentioned in said amended complaint, all of the ground included in the tract designated in said amended complaint as Terminal Tract No. 1-B was subject to said oil placer mining locations above mentioned, and was not public land open to location by railroad companies for either right of way of terminal or station grounds.

### 2.

And for a second separate and affirmative defense defendants state and show:

### I.

That the said tract of ground described in the amended complaint herein and designated Terminal Tract No. 1-B is located at a point about two and one-half miles distant from the town of Katalla, Alaska, and between said town and the valley of Cop-

per River; that it is bounded on the south by the Pacific Ocean, and extends back from the shore line thereof a distance of fifteen hundred and fifty (1550) feet into and against a high range of mountains; that the line of railroad projected by the said Copper River and Northwestern Railway Company and shown on its maps of preliminary and definite location extends from a point known as Palm Point Beacon, westerly near the shore line, and thence northwesterly up the valley of the Copper River; that at the point where plaintiff seeks to establish its said terminal tract, the mountains extend down to a point approximately eight hundred (800) feet from the shore line of the Pacific Ocean, and rise in elevation from that point abruptly to the northward; that said tract claimed by plaintiff as a terminal tract covers this entire pass or defile between the shores of the Pacific and said range of mountains; that it is impossible for the defendant corporation to construct its line of railroad from its terminal at or near said Katalla to the Copper River Valley without passing through this pass or defile and through the said tract claimed by the plaintiff for alleged terminal purposes; that the railroad being constructed by said Copper River and Northwestern Railway Company across said tract, is being constructed on the grade established by said plaintiff for its railroad across said tract.

## 3.

For a third separate and affirmative defense, the defendants show:

That the map and field notes of survey alleged to have been made by plaintiff covering said ground designated in said amended complaint as Terminal Tract No. 1-B have been heretofore filed by said plaintiff in the General Land Office at Washington D. C., and remain on file in said office, and have not been approved by the Secretary of the Interior.

## 4.

For a fourth separate and affirmative defense herein, the defendants say:

## I.

That said plaintiff attempted to organize under the corporation laws of the State of Washington:

That by said laws it is expressly provided that no corporation organized for the purpose of building, equipping and running railroads shall commence business or institute proceedings to condemn land for corporation purposes, until the whole amount of its capital stock has been subscribed.

## II.

That the alleged articles of incorporation of the plaintiff fix its capital stock at two million dollars (\$2,000,000.00) and that the whole of said capital stock has never been subscribed.

Wherefore, respondents having fully answered herein, pray that the plaintiff be denied any relief whatsoever under its said amended complaint herein, and that the defendant company, Copper River and Northwestern Railway Company, be adjudged to be entitled to construct its said railroad across said tract of land described in said amended complaint as Terminal Tract No. 1-B on the grade heretofore fixed by said plaintiff for its alleged railroad thereon; that said plaintiff, its officers, agents, and employees be forever enjoined from obstructing or in any manner interfering with the defendants in the construction of said road across said tract, and that the defendants may be allowed their costs and reasonable disbursements herein.

W. H. BOGLE and  
WINN & BURTON,  
Attorneys for Defendants.

United States of America,  
District of Alaska,—ss.

I, M. K. Rogers, being first duly sworn, on oath say: That I am one of the defendants in the above-entitled action; that I have read the foregoing answer and know the contents thereof and believe the same to be true. That I make this verification on my own behalf as well as on behalf of my codefend-

ants The Copper River and Northwestern Railway Co., and the Katalla Company.

M. K. RODGERS.

Subscribed and sworn to before me this sixth day of June, A. D. 1907.

[Seal]

NEWARK L. BURTON,  
Notary Public for Alaska.

[Endorsed]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Co., Plaintiff, vs. Copper River and Northwestern Ry. Co., Defendant. Answer. Filed Jun. 8, 1907. C. C. Page, Clerk. By E. W. Pettit, Asst. W. H. Bogle, John R. Winn, Newark L. Burton, Attorneys for ————— . Office Juneau, Alaska.

Due service of a copy of the within answer is admitted this 6th day of June, 1907.

HAROLD PRESTON,  
SHACKLEFORD & LYONS and  
F. M. BROWN,  
Attorneys for Plaintiff.

*In the District Court for the District of Alaska,  
Division Number One, Juneau.*

No. — A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Reply.**

Comes now the plaintiff above-named and for reply to the answer of the defendants herein, says:

I.

Referring to the first separate and further affirmative defense in said answer set forth denies paragraphs one, two, three, four and five thereof, and each and every allegation in said paragraphs of said affirmative defense contained.

II.

Referring to paragraph numbered six of said first separate and further affirmative defense in said an-

swer, denies the same and each and every allegation therein contained, save and except that the plaintiff has been in possession of the premises therein described since said February, 1907, and alleges in fact that plaintiff has been in possession of the said premises since the month of June, 1905.

### III.

Referring to paragraph numbered seven of said first separate and affirmative defense, the plaintiff denies the same and each and every allegation therein contained.

#### 2.

And the plaintiff, further replying to the said first separate and affirmative defense in the answer of defendants contained pleads:

#### I.

That on the 16th day of May, 1905, the defendant, Copper River and Northwestern Railway Company, executed their certain articles of incorporation under which they have since been and are acting as a corporation, and that the said articles recited that the objects and purposes of said corporation were, among other things, as follows, to wit:

“a. To build, construct, operate, repair, alter, maintain and equip a railway from some point on tide water at or near Valdez in the District of Alaska to a point on the Yukon River at or near Eagle



City in the District of Alaska, with the reserved privilege of continuing the line to the Koyukuk River to some point to be later designated.”

That thereafter the said defendant, Copper River and Northwestern Railway Company filed with the register and receiver of the United States Land Office at Juneau, Alaska on the 20th day of June, 1905, its certain map of definite location locating a right of way from its said terminus, to wit, Valdez Bay, near Valdez, Alaska, to Dutch Valley, a distance of 19.12 miles, and at or about the same time made a certain survey for its terminal grounds at tide water in Valdez Bay at the end of said right of way, and filed the same in said United States Land Office;

And that thereafter, and by procurement of the said defendant Copper River and Northwestern Railway Company, the said survey of definite location was by the Secretary of the Interior approved, to wit, on the 17th day of January, 1906.

## II.

That said section of railroad so located and surveyed by said defendant, Copper River and Northwestern Railway Company, was neither constructed nor completed within one year after the approval of the said map of definite location, and that on or before the 18th day of January, 1907, the said defendant, Copper River and Northwestern Railway Company, abandoned Valdez and any points at or near

Valdez or on Valdez Bay as the Pacific Coast Terminal of its said railway line.

### III.

That thereafter, and without power or authority so to do and contrary to law and the provisions of its said articles of incorporation, and long after the completion of the preliminary surveys of the plaintiff herein and after the plaintiff had made its survey of definite location in plaintiff's complaint described, said defendant made and pretended to establish its Pacific Coast terminus at or near Katalla in the District of Alaska at a point about a mile to the east of the said Terminal Tract No. 1-B of the plaintiff, which said point is one hundred and fifty miles to the east and distant from said Valdez, Alaska; that the said pretended location of the defendant the Copper River and Northwestern Railway Company on and in the vicinity of Controller Bay and to the west of the Copper River, is void and without effect and the said defendants have no right or foundation in law to claim any property, railway rights or other rights in the vicinity of said Controller Bay.

### IV.

And the plaintiff further alleges that the location of certain oil claims formerly claimed by the Alaska Petroleum & Coal Company and now claimed by defendant, the Copper River and Northwestern Rail-

way Company, and mentioned in the answer herein, were and are void for lack of discovery; and further, that whatever claim the said Alaska Petroleum and Coal Company and the said Copper River and Northwestern Railway Company have had, if any, or now claim to have thereto, have been forfeited in this, to wit, that in each and every year succeeding the location of said claims or purported claims as alleged in defendants answer, the claimants thereto have failed to perform the work and labor upon said claims tending to develop said claims as oil or mineral lands and locations, as required by law, to the amount of one hundred dollars on each claim for each of said years; that no work has been done or performed upon the said claims between the years 1901 and 1905 inclusive and prior to the first survey of the Terminal Tract No. 1-B and the entry of plaintiff upon said terminal tract and the possession thereof, and all right, title, and interest of the defendants or either of them and those under whom they claim, had lapsed and become void prior to the month of June, 1905.

Sub. V.

That at the time the plaintiff corporation entered upon said ground included within the exterior boundaries of said Terminal Tract No. 1-B and took possession thereof and caused said survey to be made thereon, to wit, in the month of June, 1905, the said

ground was open, unoccupied public lands of the United States.

#### IV.

Replying to the second separate and affirmative defense of the answer of the defendants herein, plaintiff admits that the tract of ground described in the plaintiff's amended complaint herein and designated Terminal Tract No. 1-B is located at a point about  $2\frac{1}{2}$  miles distant from the town of Katalla, Alaska, and between said town and the valley of the Copper River, and that it is bounded on the south by the Pacific Ocean and extends back from the shore line thereof a distance of 1550 feet upon the eastern side line or course of the said tract, but denies each and every other or further allegation in the first paragraph of said second separate and affirmative defense contained.

#### V.

Referring to the third separate and affirmative defense in the answer of the defendants contained, the plaintiff denies each and every allegation therein contained.

#### VI.

Referring to the fourth separate and affirmative defense in the answer of the defendants contained, the plaintiff denies each and every allegation in paragraph one (1) of said affirmative defense, save and except that the plaintiff corporation is organized un-

der the corporation laws of the State of Washington; and referring to the second paragraph of said fourth separate and affirmative defense, the plaintiff admits that the articles of incorporation of the plaintiff corporation fix its capital stock at the sum of \$2,000,000.00, but deny each and every other or further allegation in said paragraph contained.

Wherefore, plaintiff prays as in its amended complaint herein.

HAROLD PRESTON,  
F. M. BROWN and  
SHACKLEFORD & LYONS,  
Attorneys for Plaintiff.

United States of America,  
District of Alaska,—ss.

S. A. D. Morrison, being first duly sworn, on oath deposes and says: That he is the vice-president of the plaintiff corporation; that he has read the above and foregoing reply, knows the contents thereof, and the same is true as he verily believes.

That he makes this verification for and on behalf of said plaintiff corporation for the reason that the president of said corporation is not within the District of Alaska.

S. A. D. MORRISON,

Subscribed in my presence and sworn to before me this 7th day of June, 1907.

[Seal]

T. R. LYONS,  
Notary Public in and for the District of Alaska.

Due service of a copy of the within is admitted this 8th day of June, 1907.

WINN & BURTON,  
Attorneys for Defendants.

[Endorsed]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1. At Juneau. Alaska Pacific Ry. & Terminal Co., et al., Plaintiff, vs. The Copper River & Northwestern Ry. Co., et al., Defendants. Reply. Filed June 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Harold Preston, Shackelford & Lyons and F. M. Brown, Attorneys for Plaintiff. Office: Juneau, Alaska.

---

*In the District Court for the District of Alaska, Division Number One, at Juneau.*

No. — A.

THE ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY, THE KATALLA COMPANY, and M. K. ROGERS,  
Defendants.

**Affidavit of M. W. Bruner.**

United States of America,  
District of Alaska,—ss.

M. W. Bruner, being first duly sworn, on oath deposes and says:

I am a resident of Katalla in the District of Alaska, and have been since the month of June, 1902, well acquainted with the ground within the exterior boundaries of the plaintiff's Terminal Tract No. 1-B, and well acquainted with the ground in the vicinity of said Terminal Tract No. 1-B and with the right of way of the plaintiff company as indicated upon the map of the definite location thereof approved by the Secretary of the Interior herein on the 18th day of March, 1907;

That I first visited the ground covered by said Terminal Trace No. 1-B and the right of way in the vicinity thereof belonging to the plaintiff herein in the month of June, 1902, and was present on said ground from time to time during three visits to the vicinity of Katalla in and during the summer of 1902; that the only structures on said ground at that time within the exterior boundaries of said Terminal Tract No. 1-B or near the same, consisted of four abandoned cabins in an advanced state of decay and unoccupied; that said cabins were situated in a

northerly direction from Inner Martin or Whale Island and upon the mainland about 200 feet north of the line of ordinary high tide; and that at said time and about 200 feet westerly from the said cabins were situated five graves.

That I have resided in the vicinity of Katalla, and been present upon the ground included within the Terminal Tract No. 1 B frequently for time to time ever since the said year of 1902; that I have frequently and from time to time been all over the ground included within the exterior boundaries of said Terminal Tract No. 1 B, and have examined the same on a number of occasions for the purpose of ascertaining whether there were any indications of oil upon the said ground or in the vicinity thereof and for a considerable distance to the northward of the said tract; that I have never been able to discover nor have I ever seen any indications of oil, or seepage, either in crevices or depressions or otherwise anywhere within the exterior boundaries of said Terminal Tract No. 1 B, and that my examination of the said ground with reference thereto has been so thorough that I now state that there are no indications of oil or seepage anywhere upon or near said tract, and that no oil is known or seen to appear at any place nearer than three miles from the said Terminal Tract No. 1 B.

That I know of a certain group of mineral locations among which are two certain claims designated



as the "Standard Oil" and the "Oil King" claims; that one W. A. Abernathy signed my name to a certain oil location dated November 23d, 1901, among which were the said Standard Oil claim and the Oil King claim; that the said Abernathy has from time to time since said date stated to me personally that the ground included within the exterior boundaries of said group of claims including the said Standard Oil and Oil King claims were non-mineral in character and that there was no oil to be found upon the same, and that the said ground was unfit for any purpose other than a townsite or other non-mineral purpose; and the said Abernathy has stated to me frequently that no oil had ever been discovered upon the said group of claims or upon the ground included within the exterior boundaries of said Terminal Tract No. 1 B, nor within three miles of that point.

That in the year 1902 nothing was done to my knowledge or observation upon the said terminal tract No. 1 B or any of the mineral locations in the vicinity thereof in the way of developing the same for oil, mineral, or other purposes, and that no improvements were made during said year to my knowledge or observation upon any of said ground for any purpose.

That I have heard it claimed that certain trails had been blazed across the said Terminal Tract No. 1 B and that a limited amount of trail had been con-

structed on or near said mineral locations, but a physical examination of said tract did not and does not disclose any evidence of any work whatever in the way of improvements, trails, or blazing thereon, except as hereinafter set forth.

That no work of any character whatsoever was done upon the said ground, including said Terminal Tract No. 1 B or upon or in the immediate vicinity thereof during the years 1903, 1904, nor up to and until the month of November, 1905, save and except by the plaintiff corporation which, in the month of June, 1905, and to my personal knowledge, I being present at said time, one Webster Brown a civil engineer, for and on behalf of the plaintiff corporation surveyed upon said ground, laid out, and clearly marked upon the ground the exterior boundaries and corners now constituting the exterior boundaries and corners of said Terminal Tract No. 1 B; that the said survey consisted of the blazing of well-defined lines and by swamping out of the exterior boundaries lines, and by setting two stone corner posts and two wooden corner posts at the four corners of what now constitutes the said Terminal Tract No. B; that it was a matter of common knowledge in the community at Katalla and in the vicinity of the said Terminal Tract No. 1 B and so generally announced, that said survey was made for the purpose of defining the exterior boundaries of a tract to be used by the plain-

tiff corporation as a railroad terminal tract; that each corner monument on the said tract so surveyed bore the inscription chiselled in and plainly visible thereon: "A. P. R. T. Co. Cor. No." (designating the proper numbers respectively) and "T. 1 B," and that in addition thereto said Corner No. 1 was clearly identified and marked by the blazing of a witness tree about twelve feet distant therefrom, and by the blazing of and marking two witness trees at Corners Nos. 2 and 3; and that Corner No. 4 thereof, not being in the vicinity of trees was clearly identified and marked by a witness stone or monument marked by chiselling: "W. C. Cor. No. 4, A. P. R. T. Co. T 1 B" about 91.4 feet north of the true corner; that said corner stones above mentioned are still upon the ground at the corners designated above, and bear the same chiselled markings thereon and remain visible, and that the respective corners hereinabove referred to as being marked by wooden corner posts have since been marked by plaintiff corporation by stone corners bearing the inscription appropriate to each of said corners as aforesaid as above described and indicated, and that the said stakes or wooden posts remained upon the ground and at the proper corner locations until removed by plaintiff corporation at the time stone monuments were substituted therefor.

That thereafter and during the winter of 1905-6 certain persons entered upon the said tract so surveyed and swamped out a short piece of trail along the southerly portion of the said Terminal Tract No. 1 B, but that during the year 1905 no development work or work tending to develop said claims as oil or mineral claims was done upon the said ground, and the said ground bears and never bore evidence whatever of any work whatever thereon except that a roof had been placed upon one of the cabins heretofore mentioned which had not been previously roofed; that said roof was placed on said cabin in the absence of affiant, and the persons doing said work are and were unknown to affiant.

That I was frequently upon the ground during the summer of 1906 and up and until December of the year 1906, and again returned to said premises about the 8th of April, 1907; that during the said summer of 1906 I was camped upon the ground covered by said Terminal Tract No. 1 B a portion of said summer, and I have since been over said ground and carefully examined the same with reference to ascertaining what if any work has or had been done thereon, and that no work has been done thereon to my knowledge, and said ground bears no evidence of work whatever having been done thereon by any other person or persons at the Alaska Pacific Railway and Terminal Company since the said winter of

1905-6; that during the summer of 1906 the plaintiff company established an engineering camp on the said Terminal Tract No. 1 B and there were from five to eight men employed by said company and camped on upon said ground during said year and up until some time in the month of November thereof.

That from the said month of June, 1905, up until the present date the said plaintiff corporation has been openly, notoriously and continuously (save and except during the winter months or seasons when work in said vicinity cannot be performed) in the possession of the ground included within the exterior boundaries of said Terminal Tract No. 1 B, and that it has been a matter of common knowledge and notoriety that the said ground was claimed by the plaintiff corporation for terminal purposes, and that the plaintiff corporation intended to make its main terminus upon the said tract; that the said ground is located immediately behind and in a northerly direction along the shore of the main land known as Inner and Outer Martin Island, and that the same has been known and reputed as the only natural wharf and terminal site upon Controller Bay, Alaska, and that said ground is absolutely necessary and essential to the plaintiff corporation for a terminal and switching ground and for the erection of roundhouses, stations, and all necessary structures

used at a tidewater terminal in connection with the railroad line of the plaintiff corporation; and that if the defendant, Copper River and Northwestern Railway Company is permitted to cross said terminal tract transversely it will render the said tract practically useless as a terminal ground and destroy the value thereof as railroad yards and terminal.

That from my first visit to the said ground in the year 1902 up to the present date no work has been done thereon save and except by the plaintiff corporation, except the swamping of the trail above mentioned, and the erection of the roof on the old cabin above mentioned, and that said work, according to the value of labor and materials in said community and shown thereby, would not exceed in cost the sum of one hundred dollars (\$100).

That I am acquainted with Clark T. Davis, one of the persons who has filed an affidavit herein on behalf of defendants and who is known as the General Manager of the Alaska Petroleum and Coal Company; that said Davis spends most of his time in the vicinity of said Katalla and has been thorough-cognizant since the year 1905 of the claim of the plaintiff corporation to the ground within the exterior boundaries of said Terminal Tract No. 1 B; that neither the said Davis, nor any other officer or agent of the said Alaska Petroleum and Coal Company, nor any of the officers or agents of the defendant

corporation nor any of the defendants, have ever protested to me or any one else representing the plaintiff corporation to my knowledge, against the claim and occupancy by the plaintiff corporation of the said Terminal Tract No. 1-B, nor did he nor they or any of them ever claim to me or to any one to my knowledge that the same were or are valid oil claims or otherwise, and that no one has to my knowledge since said year of 1905 laid any claim to the said ground, but on the contrary the plaintiff's possession therein and thereto has been maintained quietly and peaceably until within the last sixty days, when the defendant railway company here announced their and its intention to lay a line of railroad across the said Terminal Tract No. 1-B, and that in claiming a right to cross said Terminal Tract no mention has been made nor claim set up, to my knowledge, of any character or description whatsoever under the said Alaska Petroleum and Coal Company.

That it is a matter of common knowledge and notoriety in said community of Katalla, that the old cabins which affiant first saw on the ground included within said terminal Tract in the year 1902 and in this affidavit described, were erected as follows, to wit: Two of said structures were erected by the Alaska Commercial Company some twenty-five (25) years ago for the purpose of a trading post, which said two cabins have long since been abandoned; that the re-

mainder of said structures were erected by Indians or for their use in connection with and at or shortly after their appearance and apparent state of decay in the year 1902 as seen by affiant, must have been erected at least twenty (20) years previously; and that it was a matter of general knowledge and notoriety in said community in said year of 1902 that all of said structures had been abandoned for more than fourteen years previously thereto.

That no drilling or other attempt to develop said claims heretofore mentioned as oil claims has ever been had or performed upon said ground; that no drilling or other bona fide attempt to secure or develop oil has been done within three miles of the said Terminal Tract No. 1-B, and that no oil has been struck within seven miles of said Terminal Tract; that there never has in the vicinity of said Terminal Tract or of the said Katalla, nor in the vicinity of said Copper River's mouth, been any oil produced in commercial quantities.

That I am familiar with the contour and elevations of the ground in the vicinity of said Terminal Tract No. 1-B, and have read the various affidavits of the defendants herein in reference thereto; that there is no pass, defile, or canyon in the vicinity of the said Terminal Tract No. 1-B, and none is known to exist in that vicinity; that there is no natural obstacle to prevent the construction of a railroad line to the



north of said Terminal Tract and around said Terminal Tract No. 1-B to connect Palm Point Beacon with the present proposed line of the said Copper River and Northwestern Railway Company westerly; but on the contrary affiant states that it is entirely feasible and practicable for the said defendant railway corporation to pass from said Palm Point to the north of the said Terminal Tract No. 1-B with its main line of road without any natural obstacle which would interfere with the operation of the said road or add to the cost or maintenance thereof, and that during all of affiant's acquaintance with the ground within and in the vicinity of the said Terminal Tract No. 1-B, affiant has never heard the said ground upon said tract or anywhere within the vicinity thereof, or anywhere along the shore between Palm Point and points to the westerly of said Terminal Tract No. 1-B, called or designated a pass, canyon or defile, until a copy of a protest of the said Copper River and Northwestern Railway Company filed in the Department of the Interior since the commencement of this suit was called to my attention on the 5th day of June, 1907; that I have never heard of or seen a canyon, pass or defile as heretofore referred to and as referred to in said protest, within miles of said Terminal Tract No. 1-B.

That the general nature of the ground in the vicinity of said Terminal Tract No. 1-B is as follows:

Said Terminal Tract extends back from the line of mean high tide of the waters of the Pacific Ocean, in a northerly direction transversely about 1500 feet, and the country north of the northerly boundary of said tract is practically flat for a distance of from one to one and a half miles immediately in the rear and to the northward of said tract, said extent of country being frequently affected by the extreme tides of the ocean so as to be covered with tidal waters; that to the easterly of said tract are a number of hummocks and small foothills, but that no high or precipitous mountains rise anywhere in the vicinity of said tract or nearer thereto than from 1000 to 1500 feet northeasterly from the northeast corner of said Terminal Tract No. 1-B.

That I am acquainted with the work performed by the Alaska Pacific Railway and Terminal Company and the value thereof, and the expenditures of said corporation in connection with the survey and construction upon their line of railroad and upon said Terminal Tract No. 1-B, and such expenditures amount to approximately the sum of \$250,000.00 to the present date; that said plaintiff corporation is now actually engaged in the construction of its said railroad and terminals, and has employed in such work about three hundred (300) men; that there is no other place in the vicinity of the proposed wharf and landing place of the plaintiff corporation on

Whale or Martin Island, which the plaintiff could use for a terminal yards and switching ground other than the said Terminal Tract No. 1-B, and the same and the whole of the said Tract is necessarily required by the said plaintiff corporation as a terminal ground and station.

Referring to the graves hereinbefore mentioned and situated on the said Terminal Tract No. 1-B, the same have been in no way molested or disturbed since the survey of the said Terminal Tract save and except by the blasting carried on by the defendant railway corporation herein in the months of April and May, 1907, which blasting has been carried on by said defendant so as to throw stumps and other debris in the vicinity of and upon the said graves; said blasting of the defendant furthermore has been so recklessly carried on and done by said defendant that stumps and debris have been thrown thereby upon the tents and structures occupied by the plaintiff and its employees, rendering the same at times unsafe.

That no protest has ever been made by any party or parties interested in said graves, or by any other person, against the occupancy of the said Terminal Tract No. 1-B by the plaintiff corporation, until the defendants secured certain affidavits for the hearing now pending in this cause, and that none of the affiants referring to said graves in said affidavits are in any wise interested in said graves; that on the con-

trary, an arrangement has been effected by affiant for and on behalf of the plaintiff with all of the living relatives of the deceased buried in or within the limits of said tract No. 1-B, either to enclose the said graves and fully protect the same, or at the cost of plaintiff to remove the bodies there buried to some other place agreeable to the wishes of said friends and relatives.

H. W. BRUNER.

Subscribed in my presence and sworn to before me this 7th day of June, A. D. 1907.

[Seal]

T. R. LYONS,

Notary Public for Alaska.

[Endorsed]: No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Ry. & Terminal Company, a Corporation, Plaintiff, vs. Copper River & Northwestern Ry. Co., a Corporation, et al., Defendants. Affidavit of M. W. Bruner. Filed. Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackelford & Lyons, Attorneys for Plaintiff. Office: Juneau, Alaska.

*In the District Court for the District of Alaska, Division Number One, at Juneau.*

No. — A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,  
Defendants.

**Affidavit of S. A. D. Morrison.**

United States of America,  
District of Alaska,—ss.

S. A. D. Morrison, being first duly sworn, on oath deposes and says:

That I am vice-president of the plaintiff corporation above named and its general manager.

That in the spring of the year 1906, shortly after the articles of incorporation of the plaintiff corporation were amended in compliance with the requirements of the Secretary of the Interior, affiant had a conversation with one William Ray, at that time the

attorney for the plaintiff company, in which the said William Ray assured affiant and stated to affiant that the amended articles of incorporation of the plaintiff company as amended in the month of March, 1906, had been transmitted to and filed with the officers designated by the Code of Alaska with whom articles of incorporation are required to be filed, together with the other papers required of foreign corporations under said Code.

That until the 5th day of June, 1907, affiant and the officers of the plaintiff corporation relied upon the statement of the said Ray to the effect that said amended articles of incorporation had been filed with such officers, when I made inquiry of the Secretary of the District of Alaska, and he stated to me that said amended articles of incorporation had not been filed in his office; that thereafter I instituted inquiry by telegram to Seattle, and ascertained that the said Ray had transmitted one copy of said amended articles of incorporation to the clerk of the Third Division at Valdez, Alaska, and one copy of said amended articles of incorporation to the clerk of the first division at Juneau, Alaska, instead of transmitting said last-mentioned copy to the Secretary of the District of Alaska; that I thereupon procured through the attorneys of the plaintiff corporation a withdrawal of the certified copy of the articles so amended as so erroneously filed with the clerk of

the first division at Juneau, and on the 7th day of June, 1907, said amended articles so withdrawn were filed with the Secretary of the District of Alaska.

That I thereupon and on the 6th day of June, 1907, made inquiry by cable to ascertain whether a certified copy of said amended articles had been filed with the clerk of the third division at Valdez, Alaska, where the same are required by law to be filed, and in response thereto received the following telegram from the deputy clerk of the court for the third division at Valdez, Alaska:

“Certified copy amended articles of incorporation Alaska-Pacific Railway and Terminal Company, Washington corporation filed in my office, March seventh, nineteen hundred six.

CRANDAL,  
Deputy Clerk.”

That the said certified copy of amended articles of incorporation of the plaintiff company so erroneously filed with the clerk of court for the first division at Juneau, were filed by me on the 10th day of March, 1906, as shown by the records in his office and by the official stamp of said clerk upon the back of said copy of the amended articles of incorporation of plaintiff company aforesaid.

That the plaintiff corporation has not been engaged nor is it engaged in business in the first division of the District of Alaska.

S. A. D. MORRISON.

Subscribed in my presence and sworn to before me  
this 7th day of June, A. D. 1907.

[Seal]

T. R. LYONS,

Notary Public for Alaska.

[Endorsed]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Ry. & Terminal Co. et al., Plaintiff, vs. The Copper River & Northwestern Ry. Co. et al. Defendants. Affidavit of S. A. D. Morrison. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Harold Preston, Shackelford & Lyons and F. M. Brown, Attorneys for Plff. Office: Juneau, Alaska.

Due service of a copy of the within is admitted  
this 8th day of June, 1907.

WINN & BURTON,

Attorneys for Defendants.



*In the District Court, for the District of Alaska, Division Number One, Juneau.*

No. — A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Affidavit of C. E. Davidson.**

United States of America,  
District of Alaska,—ss.

I, C. E. Davidson, being first duly sworn, on oath depose and say: That I am now and have been for the last nine years a resident of Juneau, in the District of Alaska; that during all of said time I have been a United States Deputy Mineral and Non-mineral Surveyor; that in the month of December, 1904, I made a survey of a tract of land comprising about eighty (80) acres, in the vicinity of Katalla, Alaska, for one P. M. Byrne of Spokane, Washington, which survey was known as "Soldier's Additional

Entry Survey No. 572," and which survey was thereafter duly approved by the Surveyor-General for the District of Alaska.

That I have examined plaintiff's map of its Terminal Tract No. 1-B, and that said survey No. 572, included the greater portion of said Terminal Tract No. 1-B.

That at the time I made said survey I made a careful examination of the ground included therein to ascertain whether or not the same was mineral in character and whether or not there were any evidences of oil contained thereon such as seepages or discoveries or collections of oil in depressions thereon, and from said examination I ascertained that said tract of land was non-mineral in character.

That I am familiar with all of the land included within the said Terminal Tract No. 1-B and know that the same is non-mineral land; that I also made an examination of the surface of said Terminal Tract No. 1-B and the surrounding territory, north, east, and west, and said terminal tract is almost level; and that the ground immediately north and west of said Terminal Tract No. 1-B slopes gradually from the northerly line of said tract to the mountain, a distance of about one thousand feet; that there is no defile or pass in the vicinity of said terminal tract, nor within sight of the same, and that it is such land as is classed "rolling land."

That I know the location of Palm Point, and established Location Monument No. 572 at that point in December, 1904; that it is both feasible and practicable to construct a railroad line from said Palm Point around and north of the exterior boundaries of the land embraced within said Survey No. 572;

That at the time I made said survey, there were no structures or other buildings on said Terminal Tract No. 1-B, except four or five old cabins; that at the time I made said survey I remained in the vicinity of Katalla for more than twenty days, and that nobody at that time, to my knowledge, laid any claim to the land embraced in the said Survey No. 572, except the party for whom I made said survey.

C. E. DAVIDSON.

Subscribed in my presence and sworn to before me this 7th day of June, A. D. 1907.

[Notarial Seal of T. R. Lyons]

T. R. LYONS,

Notary Public in and for Alaska.

[Endorsement]: No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Ry. & Terminal Co., a Corporation, Plaintiff, vs. Copper River & Northwestern Ry. Co., a Corporation et al., Defendants. Affidavit C. E. Davidson. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Shackelford & Lyons, Attorneys for Plff. Office: Juneau, Alaska.

*In the District Court for the District of Alaska, Division Number One, at Juneau.*

No. — A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Complainant,

vs.

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

**Affidavit of S. A. D. Morrison.**

United States of America,  
District of Alaska,—ss.

S. A. D. Morrison, being first duly sworn, on oath deposes and says:

I am vice-president and general manager of the plaintiff corporation above named.

That I am well acquainted with the ground included within the exterior boundaries of Terminal Tract No. I-B, referred to in the amended complaint herein, and the right of way of the plaintiff company in connection therewith.

That I first visited the ground included within the exterior boundaries of said terminal tract in the month of June, 1905; that I went upon the said terminal tract at said time with one Webster Brown, a Deputy United States Surveyor, and was present thereon at the time the said Brown made the first survey of the exterior boundaries of said Terminal Tract No. 1-B; that the said Webster Brown was employed by me to make said survey for and on behalf of the plaintiff, and under the authority of its Board of Directors.

That when I and the said Brown arrived upon the said ground the same was open and vacant lands of the United States and wholly unoccupied by anyone, and that I went over the said ground thoroughly and have from time to time since been upon and over said ground at frequent intervals, and am thoroughly acquainted with the surface indications thereon; that I have never seen any seepage of oil, of petroleum or any other mineral indications of any character upon the said ground, and have never heard of any such indications having been found upon said ground by any one, but that on the contrary the said ground has the reputation in said community of being non-mineral ground; that there was not at any time and never has been on said ground any indications of work having been done thereon tending to develop or explore said ground for the

discovery or production of oil or minerals of any character; that no indications of drills or other machinery ordinarily used in the exploration for and development of oil or other mineral claims having been placed or used upon said ground or in the near vicinity thereof have ever been seen by me during my acquaintance with said tract No. I-B; that I am a resident of the State of Pennsylvania and reside near Pittsburg in said State, and was born and raised in the oil fields of Pennsylvania, and have from time to time been engaged in the production of oil and the exploration and development of oil properties; that from affiant's examination of the ground within the exterior boundaries of said Terminal Tract No. I-B, and the ground in the vicinity thereof, I am of the opinion and state the fact to be that there are no oil lands anywhere, either on said terminal tract or in the immediate neighborhood thereof; that no indications of seepage of any oil are known to exist or do exist within three miles of said terminal tract, and that there has been no active development tending to produce oil of any character within less than three miles of the said terminal tract, and that all of the development work looking to the production of oil in the Katalla District within a radius of fifteen miles of said Terminal Tract No. I-B have failed to produce oil in paying quantities or to indicate the likelihood of the pro-

duction of oil in paying quantities; that work looking to the discovery and development of oil properties and the production of oil in paying quantities has been carried on in the said Katalla District for more than six years past and large sums of capital have been expended in said District in that behalf; that it is my opinion, and the well-recognized consensus of experts, and is a matter of common knowledge, that all efforts in said District in that direction have been and are a failure and that said District is not an oil district; that it is a matter of common knowledge and a fact that all of the said District some five or six years ago was covered with locations of purported oil claims, and with the exception of a very few of such locations (and none within three miles of said Terminal Tract No. I-B) have all been abandoned and given up as failures and have been allowed to lapse and become forfeited.

That upon my arrival upon said ground in June, 1905, as aforesaid, the only structures apparent thereon were some four or five graves which had apparently been on the ground for a number of years previously; that there was also on said ground four (4) cabins in an advanced state of decay and in a dilapidated condition, were unfit for habitation, and there were no signs of the same having been used recently.

That at the time the said Terminal Tract No. I-B was so surveyed by the said Webster Brown as afore-

said, I made inquiry of one George T. Barrett, an old resident in the vicinity of said Katalla, and he stated to me that two of the said cabins had been erected by him as agent for the Alaska Commercial Company some twenty-three years previous to that time, and that the others of said cabins had been erected about the same length of time previously by him for certain Indians; that he further stated to me that said cabins had long since been abandoned and that he willingly surrendered any claim that he might have thereon to the plaintiff herein.

That during the month of June, 1905, the said Webster Brown surveyed the said Terminal Tract No. I-B and the right of way in connection therewith and in the vicinity thereof, and plainly marked the boundaries of the said tract upon the ground by swamping out and blazing along the exterior boundaries thereof, and by placing two stone and two wooden corner posts upon corners numbered one, two, three and four respectively, which said corner monuments were plainly marked and bore the inscription: "A. P. R. & T. Co., No." (giving the respective corner numbers). "T I-B," and plainly marked, in addition thereto in the vicinity of said corners the proper witness corners and inscriptions thereon calling attention to said corners respectively; that affiant announced to various persons in the vicinity of said Katalla and it became a matter



of common knowledge, that affiant and the said Webster Brown were there for the purpose of surveying a right of way and terminal tract for the plaintiff, and it was generally known throughout said Katalla and the community in the vicinity thereof, that the said ground had been surveyed and the boundaries thereof marked out for the purpose of establishing a terminal tract for the plaintiff company.

That the said Terminal Tract No. I-B was so established by the plaintiff long prior to the time any other person or corporation had proposed to build a railroad in said vicinity; that it was not until the year 1906 in the month of September thereof that the defendant railway company or any other person or corporation announced an intention of building a railroad in the vicinity of Controller Bay.

That during the said year of 1905, the said Webster Brown acting for and in the employ of the plaintiff, proceeded with an engineering force and surveyed the first fourteen and 7/10 miles of the railroad right of way of plaintiff from Martin Islands to a point on the easterly shores of Bering Lake; that from said time and during all of the open seasons in which surveying and other railroad and construction work was feasible, the plaintiff corporation has proceeded, at a large expense to cause a survey to be made of a line of railroad from the

said Martin Islands into the interior of Alaska, having surveyed up to the present time a distance of about one hundred and fifty-five (155) miles up the valley of the Copper River, and has proceeded in good faith and at large expense to engage in the active construction of the said line of railway and the terminal improvements in connection therewith, having actually expended up to the present date in that behalf about two hundred and fifty thousand dollars (\$250,000.00).

That the said Terminal Tract No. I-B was located and surveyed at the point mentioned immediately north of the Martin Islands, for the reason that it was known and is apparent from the conditions there existing that the said Martin Islands constitute and enclose the only naturally protected waters for wharf and harbor purposes upon said Controller Bay; that in the year 1905 affiant proceeded with a force of men to make a harbor survey in the vicinity of the said Martin Islands to ascertain definitely whether the same was accessible to ocean-going steamers, and afterward made a second survey thereof for the purpose of verifying the first survey so made.

That in addition to the survey of the ground included within the exterior boundaries of said Terminal Tract No. I-B, affiant caused to be surveyed and marked out an additional tract of land to be

used for landing purposes on Inner Martin Island where it was and is proposed by the plaintiff to construct docks and wharves; and that during said summer of 1905 it became a matter of common knowledge in the vicinity of said Controller Bay that said Martin Islands were to constitute the wharf and dock site of the plaintiff company; that since said time and until the month of March, 1907, no one to me or to my knowledge has made any claim of right to the ground included within the said Terminal Tract No. 1-B save and except plaintiff, and no protest or objection has been made against the occupancy of the said terminal tract by the said plaintiff company.

That I remained in the vicinity of said Terminal Tract No. 1-B until the month of October, 1905, when I returned to Puget Sound in connection with business of the plaintiff company.

That during said summer of 1905 no attempt was made by anyone other than the plaintiff corporation to enter upon said ground or to occupy the same; that I returned to the said Terminal Tract No. 1-B in the month of June, 1906, and that there was no apparent change in the appearance or conditions of the ground included therein other than that certain persons unknown to affiant had constructed a roof over a previously partially completed cabin, and a narrow trail across a portion of said tract had been swamped out, but that the value of the work and labor thereon

would not, all told, exceed the sum of one hundred dollars; that there was no other work whatsoever, of any nature, visible either on said terminal tract or in the immediate vicinity thereof at said time.

That during the said summer of 1905 the said tract was occupied by a corps of engineers employed by the plaintiff herein, and that their possession of the said tract was peaceable and undisturbed; that said ground bore no other or further marks of or indications of having been prospected or developed for oil or other purposes during said summer of 1906.

That prior to the said survey of the said Terminal Tract No. 1-B in 1905 by the said Webster Brown, a large portion of said terminal tract had been surveyed for one Peter F. Byrne for the purpose of perfecting a Soldiers' Additional Homestead entry thereof; that plaintiff corporation purchased a relinquishment of the rights of said Peter F. Byrne on and including the greater portion of said Terminal Tract No. 1-B and paid him therefor the sum of one thousand dollars to the personal knowledge of affiant, which said relinquishment was thereafter filed in the General Land Office at Washington, D. C.

That I remained in the vicinity of the said Katalla until the month of September, 1906, and was frequently upon said Terminal Tract No. 1-B; that no person, persons or corporation entered thereon during said time or attempted to do any assessment work during said year, and that no one ever pro-

tested to me and I never heard of any protest on the part of any one against the occupancy of the plaintiff company of said tract of ground up to that time.

That I returned to the said Controller Bay about the 22d day of April, 1907, and have ever since said time except when temporarily absent, been living upon said Terminal Tract No. 1-B; that when I returned to the said tract it was already in the occupancy of the employees of the plaintiff company, and a large crew of laborers and employees of the plaintiff corporation were then living and working thereon, the first of said employees having been sent there about the month of February, 1907. That there were no indications upon the said ground of any other or further work by any persons other than the plaintiff corporation at that time; that there has never been upon the said ground any indications of work tending or calculated to prospect or develop said grounds for oil or other mineral purposes.

That in the month of March, 1907, one Henry R. Harryman, one of the persons who has filed herein an affidavit on behalf of defendants, informed me that the Alaska Petroleum and Coal Company herein referred to had given to the Copper River and Northwestern Railway Company a right of way over all oil locations claimed by it, and stated to affiant that he desired to enter into an arrangement with the plaintiff corporation whereby the said Alaska

Petroleum and Coal Company should have a right of way across the said Terminal Tract No. 1-B for pipe lines and a right to take oil from said lands; that this was the first occasion upon which the plaintiff corporation had ever received notice from any person or persons or corporation whatsoever that they claimed any rights in and to the land included in said Terminal Tract No. 1-B other than the claim of the said Peter F. Byrne as hereinbefore stated; that thereafter I was informed by employees of the plaintiff corporation that one M. K. Rogers had stated that he intended to build a line of railroad across the said terminal tract of the plaintiff.

That I have heard read the answer of the defendants herein in which it is stated that the plaintiff company never entered into the possession of said Terminal Tract No. 1-B until the month of February, 1907, and the said statement is to my knowledge untrue and the facts relative thereto are as hereinbefore stated; that I have heard read the further allegation of said answer of defendants that the plaintiff company dispossessed certain persons in possession of said grounds about the month of February, 1907; that there has never been reported to me any claim on the part of any persons whatsoever, and I never heard of such claim, before or prior to hearing read the said answer, that the plaintiff company had ever dispossessed any one from the ground within

the exterior boundaries of said Terminal Tract No. 1-B nor is such claim true; that on the contrary, up to and until shortly before the said Copper River and Northwestern Railway Company announced their intention of crossing the said Terminal tract, the claim of the plaintiff company to the possession and right of possession thereof has been uniformly recognized by all persons and corporations in the vicinity of said Controller Bay.

That I am well acquainted with the contour and nature of the ground for a number of miles either way in the vicinity of the said Terminal Tract No. 1-B and all the ground contained within the exterior boundaries thereof, and as well the land along the shore from Palm Point for a considerable distance westerly from said Terminal Tract No. 1-B; that I have never heard the expression "canyon," "pass," or "defile" used or applied in connection with any ground in that vicinity prior to the 5th day of June, 1907, when I read a copy of the protest of the said Copper River and Northwestern Railway Company said to have been filed in the Department of the Interior seeking to secure a disapproval of the said Terminal Tract No. 1-B in the General Land Office on the ground that the same was situated in a canyon, pass or defile; that there are no canyons, passes or defiles to my knowledge in the vicinity of said Terminal Tract; that to the northeast of the north-

easterly corner of said Terminal Tract No. 1-B there is a gradual rise or slope commencing some twelve or thirteen hundred feet north of the shore line, which consists of a hillock or knob near the northeast corner of said Terminal Tract and about 1,000 feet therefrom; that to the north of said tract the ground is low and flat in nature; that there is a natural hollow or depression in the said knob or hillock about four hundred feet from the northeast corner of said Terminal Tract No. 1-B and to the east of the same through which it would be perfectly feasible and economical to construct a line of railroad connecting Palm Point with the proposed line of the said Copper River and Northwestern Railway Company to the west of said Terminal Tract without crossing the said Terminal Tract at all, which said line could cross the Terminal Branch Line No. 1 of the plaintiff company, and that such line of road could be constructed along the side of the hill and through the said draw or hollow at a very gradual and easy grade; that the ground immediately north of said Terminal Tract No. 1-B is so low and flat that it is affected by and covered by the extreme tides, and that there are no high or precipitous mountains or hills within half a mile either to the northeast or to the northwest of the extreme corners of the said Terminal Tract No. 1-B counting said distance to the base of such mountain or hill, and a line of rail-



road through the said draw or hollow as heretofore indicated could be constructed and maintained at a less expense than the proposed present route of said Copper River and Northwestern Railway Company through and across said Terminal Tract No. 1-B, and with minimum grades and curvatures.

That since filing my previous affidavit herein, I have visited said Controller Bay, and prior to reaching there the defendant railway company had entered upon the east and west sides of the said Terminal Tract No. 1-B, and on the westerly side of said tract had been engaged in shoveling and cleaning out the right of way, and in blasting in such a way as to throw stumps and debris upon the camps of the plaintiff company and the habitations used by its employees rendering the same at times unsafe for occupation by such employees; that also a number of stumps and considerable debris had been thrown by said defendant company in its said operations upon the burial grounds mentioned in the affidavits on behalf of the defendants herein; that upon the east side of said Terminal Tract the defendant railway corporation and said defendants had entered upon the right of way of the plaintiff and within one hundred (100) feet of the main line of plaintiff's road as indicated by its maps of location, and started to drive and erect superstructures thereon and place cappings upon said right of way as it is alleged in

plaintiff's complaint they threatened to do and would do unless restrained.

That I have heard read the allegations of the answer of the defendants herein to the effect that all of the capital stock of the plaintiff corporation had not been subscribed; that I am a member of the Board of Trustees of the plaintiff corporation, and was present when all of the capital stock of said corporation was subscribed and the subscriptions therefor signed; that I know that each and every share of the capital stock of said corporation, to wit, to the amount of \$2,000,000.00 has been fully subscribed by responsible parties, and that not only has all of said capital stock been subscribed but the same has been to my personal knowledge fully paid for.

S. A. D. MORRISON.

Subscribed in my presence and sworn to before me this 7th day of June, A. D. 1907.

[Seal]

T. R. LYONS,

Notary Public for Alaska.

[Endorsed]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau, Alaska Pacific Ry. & Terminal Co., a Corporation, Plaintiff, vs. Copper River & Northwestern Ry. Co., a Corporation et al., Defendants. Affidavit of S. A. D. Morrison. Filed June 8, 1907.

C. C. Page, Clerk. By A. W. Fox, Deputy.  
Shackleford & Lyons, Attorneys for Plff. Office,  
Juneau, Alaska.

---

*In the District Court of the Territory of Alaska,  
Third Division.*

No. ———.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY, INC.

vs.

COPPER RIVER AND NORTHWESTERN RAIL-  
WAY COMPANY, INC.

**Affidavit of R. Coulter.**

District of Alaska,  
Kayak Precinct,—ss.

R. Coulter, being first duly sworn, upon his oath deposes and says: That he is a resident of Katalla, Alaska, and is supervisor of bridges and buildings of the company constructing the defendant's road; that he is acquainted with the country in and around Katalla, and the defendant's route for its right of way as filed with the Secretary of the Interior and the Land Office of the Territory of Alaska, and with the route and terminal grounds of the plaintiff corporation, and that he considers it impossible to build or construct the defendant's road without crossing

plaintiff's ground at such point and points where said defendant's right of way as filed with the Secretary of the Interior crosses said plaintiff's ground as filed with the Secretary of the Interior; that the defendant's road begins at Palm Point, about 2 miles west of Katalla, from which point it parallels the Pacific Ocean on the left and the plaintiff's right of way at or near the base of a high mountain chain to its right to a point at or near the plaintiff's terminal grounds, situated about 3 miles west of Katalla in a pass or defile opposite Martin Islands; that said defendant corporation begun grading, clearing and piling its right of way for roadbed at Palm Point at which place it is necessary to build a wharf and breakwater for the purpose of loading and unloading material for said road; and for the receiving and sending out of freight, etc.

That before the aforesaid defendant company can build said wharf, breakwater or equip its right of way for use, it is necessary that said defendant have the free, continual and uninterrupted use of its right of way to a point or points beyond the plaintiff's terminal grounds for the purpose of getting stone, gravel, dirt and timber to construct said road, wharf, and breakwater and to get its machinery, now on the way to Katalla, to such point or points above the plaintiff's terminal grounds for the purpose of getting out said stone, dirt, timber and conveying the same to

points along its right of way to be used for the construction and completion of said defendant's road, and that it is impossible for the defendant to reach said point without passing through and over the plaintiff's terminal grounds at such point or points designated on its right of way over the terminal grounds of said plaintiff; that said defendant company now has a large force of men working on its road and has contracted for many more men, each boat bringing between 25 and 50 men; that 200 more men are expected on the boat arriving about the latter part of May, that if this defendant company is not permitted to use its right of way continuously and at all times, and given the free and uninterrupted use of said right of way as shown on its profile or map filed, it will be delayed in the construction of its road and it will be impossible to give employment to all of its men, and that if said employees are discharged or laid off, they will possibly leave the country and the defendant will be unable to secure other men and sufficient men to construct as much of its road as is required each year and will be unable to do very little work toward the construction of its road, wharf and breakwater this season.

R. COULTER.

Subscribed and sworn to before me this the 16th day of May, A. D. 1907.

[Seal] G. C. BRITTON,  
United States Commissioner for Kayak Precinct,  
Alaska.

[Endorsed]: 623-A. District Court for the District of Alaska. Alaska Pacific Railway & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of R. Coulter. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the U. S. District Court of the District of Alaska,  
Division No. —.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RAIL-  
WAY CO. (a Corporation), KATALLA COM-  
PANY (a Corporation), and M. K. ROD-  
GERS,

Defendants.

**Affidavit of D. B. Skinner.**

D. B. Skinner, being first duly sworn, upon his oath, deposes and says: That he is a resident of Katalla, in the territory of Alaska, and a deputy

surveyor in and for said territory; that he is acquainted and knows where the plaintiff's terminal grounds are located and knows where the right of way of the defendant corporation is located in and around Katalla; that said terminal grounds of the plaintiff are situated in a pass or defile about 1½ miles west of the town of Katalla, having to its left from Katalla the Pacific Ocean and to its right a high chain of mountains; that this affiant further deposes and says; that he believes it would be utterly impracticable for the defendant railroad company to reach its destination in the Copper River region without crossing the terminal grounds of the plaintiff.

D. B. SKINNER.

Subscribed and sworn to before me this 22d day of May, A. D. 1907.

G. C. BRITTON,

U. S. Commissioner for Kayak Precinct, Alaska.

[G. C. Britton, United States Commissioner, District of Alaska.]

[Endorsement]: 623-A. District Court for the District of Alaska, Alaska Pacific Railway & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of D. B. Skinner. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

*In the District Court of the Territory of Alaska,  
Third Division.*

No. —.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY, Inc.,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY, Inc.

**Affidavit of John Krey.**

District of Alaska,  
Kayak Precinct,—ss.

John Krey, being first duly sworn, upon his oath deposes and says that he is a resident of Katalla, Alaska, and is chief engineer of the company constructing defendant's road; that he is acquainted with the country in and around Katalla, and with the defendant's route for its right of way as filed with the Secretary of the Interior and the Land office of the Territory of Alaska, and with the route and terminal grounds of the plaintiff corporation, and that it is impracticable to build or construct the defendant's road without crossing plaintiff's grounds at such point and points where said defendant's right of way as filed with the Secretary of the Interior



crosses said plaintiff's grounds as filed with the Secretary of the Interior; that the defendant's road begins at Palm Point, about two miles west of Katalla, from which point it parallels the Pacific Ocean on its left and the plaintiff's right of way at or near the base of a high mountain chain to its right to a point at or near the plaintiff's terminal grounds, situated about three miles west of Katalla, in a pass or defile opposite Martin Islands; that said defendant corporation begun grading, clearing, and piling its right of way for roadbed at Palm Point, at which place it is necessary to build a wharf and breakwater for the purpose of loading and unloading material for said road, and for the receiving and sending out of reight, etc.; that before said defendant company can build said wharf, breakwater or equip its right of way for use it is necessary that said defendant have the free and uninterrupted use of its right of way to a point or points beyond the plaintiff's terminal grounds for the purpose of getting stone, gravel, dirt and timber to construct said road, wharf and breakwater and to get its machinery, now on the way to Katalla, to such point or points above the plaintiff's terminal grounds for the purpose of getting out said stone, dirt, timber and conveying same to points along its right of way to be used for the construction and completion of said defendant's road, and that it is impossible for the defendant to reach said point with-

out passing through and over the plaintiff's terminal grounds at such point or points designated on its right of way over the terminal grounds of said plaintiff; that said defendant company now has a large force of men working on its road and has contracted for many more, each boat bringing between 25 and 50 men; that 200 men are expected on the boat arriving about the latter part of May; that if this defendant company is not permitted to use its right of way at all times, and given the free and uninterrupted use of said right of way as shown on its profile or map filed, it will be delayed in the construction of its road and it will be impossible to give employment to all of its men; that if, said employees are discharged or laid off; they will possibly leave the country and defendant will be unable to secure other men and sufficient men to construct as much of its road as is required each year, and will be unable to do very little work toward the construction of its road, wharf and breakwater this season.

JOHN KREY.

Subscribed and sworn to before me this the — day of May, A. D. 1907.

[Seal]

G. C. BRITTON,

United States Commissioner for Kayak Precinct,  
Alaska.

[Endorsed] 623-A. District Court for the District of Alaska, Div. No. 1. Alaska Pacific Ry. &

Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of John Krey. Filed Jun. 8, 1907. C. C. Page, Clerk, by A. W. Fox, Deputy.

---

*In the District Court for the Territory of Alaska,  
Third Division.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY, Inc.,

vs.

COPPER RIVER & NORTHWESTERN RAILROAD COMPANY, Inc.,

**Affidavit of Clark Davis.**

District of Alaska,  
Kayak Precinct,—ss.

Clark Davis, being first duly sworn upon his oath, deposes and says that he is the Vice-President and General Manager of the Alaska Petroleum and Coal Company, Inc., that he is now and has been residing in Katalla, Alaska, for two years; that the Alaska Petroleum and Coal Company, of which he is Vice-President and General Manager, acquired title from the owners of Standard Oil Claim and Oil King Claim in Kayak Precinct, on or before the 24th day of June, A. D. 1903, and has not conveyed, abandoned or in any way transferred said property or its

claim and title to said property to any one except as hereinafter mentioned; that prior to the acquiring of said property by said Alaska Petroleum and Coal Company all laws of the United States for the purpose of acquiring title to said claims had been complied with by grantors, locators and discoverers of said claims and property; that discovery had been made, claims staked, notices posted, claims surveyed, and sufficient work performed to comply with the laws of the United States each year; that since the purchase of said property the Alaska Petroleum and Coal Company has complied with all the requirements of the law for holding and owning said claims and property; that since the Alaska Petroleum and Coal Company has acquired rights and title to said claims it has sold to the Copper River and Northwestern Railway a right of way through and over said oil claims of 100 ft. on each side of its track or route, as filed with the Secretary of the Interior and for such other purposes as said defendant company wished to use said strip of land; that after the Alaska Petroleum and Coal Company had acquired title to said property, the plaintiff company, without permission or consent of the Alaska Petroleum and Coal Company and without condemning said property or lawfully trying to acquire or acquiring any part of said claims, selected its terminal grounds wholly within said claims belonging to said Alaska

Petroleum and Coal Company; that this affiant is familiar with the land and country in which said claims are located and the ground selected by the plaintiff company as terminal grounds, and the routes of the plaintiff and defendant in and around Katalla, and that said claims upon which plaintiff company has its terminals is in a pass or defile, with a high range of mountains to the right going westward from Katalla, and the Pacific Ocean on the left, and that it is impossible for defendant railway company to construct its road from Katalla to destination without crossing plaintiff's terminals.

CLARK DAVIS.

Subscribed and sworn to before me this the 15th day of May, A. D. 1907.

[Seal]

G. C. BRITTON,

United States Commissioner for Kayak Precinct,  
Alaska.

[Endorsed]: 623-A. District Court for the District of Alaska, Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co., et al., Affidavit of Clark Davis. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

*In the District Court for the Territory of Alaska,  
Third Division.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY, Inc.,

vs.

COPPER RIVER & NORTHWESTERN RAILWAY COMPANY, Inc.,

**Affidavit of George T. Barrett.**

Geo. T. Barrett, being first duly sworn, upon his oath deposes and says: That he is a resident of the territory of Alaska, and has continuously resided in said territory, at Katalla, for the past 28 years; that he is familiar with all of the country in and around Katalla for miles; that he is familiar with the roads, ways and the available possible means of reaching the Copper River Valley to the Chitina River and up said river; that he is acquainted with the route of the Copper River and Northwestern Railway Company from its starting place at Palm Point to the mouth of the Chitina River; that he knows it would be impossible for said Copper River and Northwestern Railway Company to build or construct its road from Palm Point, where said road begins to its destination up

the Chitina Valley, unless it followed its route as now laid out and filed with the Secretary of the Interior; and Land Department of this territory, and over which route they are now actively constructing their road along and over the aforesaid route filed with the Secretary of the Interior and the Land Department of this territory as their definite location.

That the route of the said Copper River and Northwestern Railway Company, as filed and upon which they are actively working begins at Palm Point, from thence runs in a westerly direction paralleling the ocean to its left and a high range of mountains to its right over which it would be impossible to cross or tunnel; that the plaintiff's railroad is at the base of this range and follows said range, and to the right of defendant's road, and that Kahuntla Lake extends from the base of said range to within a short distance of defendant's road; that the land and water between said range and the ocean is a pass or defile opening and entering into the country at end of said range and that the defendant's road passes through and over said pass or defile, and that the plaintiff's road and right of way where said defendant's right of way crosses plaintiff's line or grounds, as filed with the Secretary of the Interior and Land Department in Alaska, is situated in said pass or defile.

GEO. T. BARRETT.

Subscribed and sworn to before me this the 15th day of May, A. D. 1907.

[Seal]

G. C. BRITTON,

United States Commissioner for District of Alaska,  
Kayak Precinct.

[Endorsed]: 623-A. District Court for the District of Alaska. Alaska Pacific Ry. and Terminal Co. vs. Copper River & Northwestern Railway Co. et al. Affidavit of Geo. T. Barrett. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court of the District of Alaska, Division at Juneau.*

No. 623—A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY,

Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAILWAY COMPANY, Inc., et al.,

Defendants.

**Affidavit of Henry R. Harriman.**

State of Washington,  
County of King,—ss.

Henry R. Harriman, being first duly sworn upon his oath deposes and says, that he is the Secretary of



the Alaska Petroleum and Coal Company operating in Alaska and having an office in the town of Katalla; that he is familiar with the country in and around the town of Katalla and the right of way of plaintiff's road and its terminal grounds in and around Katalla; also the right of way of the defendant in and around Katalla; that the plaintiff's terminal grounds and right of way begins at a point on the ocean just opposite Martin Islands, from thence to a point at the base of a range of mountains where it follows the base of said range of mountains below the starting point of the defendant's road; that plaintiff's road at point where it begins to follow the base of aforesaid range has a high mountain paralleling its road to a point beyond where defendant's road begins, and to its right a lake paralleling said plaintiff's road to a point beyond the starting point of defendant's road, said right of way and terminal ground of the plaintiff being situated in a pass or defile, said pass or defile having to its left the Pacific Ocean and to its right a high chain of mountains; that the terminal grounds of the plaintiff corporation is situated upon property belonging to the Alaska Petroleum and Coal Company of which he is Secretary, which ground was acquired by his company on the 24th day of June, A. D. 1903; said ground was located and discovery made on the 21st day of November, A. D. 1901, and all laws for the acquiring and holding same complied with at

all times thereafter up to and including the present time; that said Alaska Petroleum and Coal Company by its agent has complied with all laws for the holding and acquiring said property and is now complying with all laws for that purpose, and has at no time abandoned or in any way disposed of its rights to said property; that it has erected buildings and other improvements on said property, that the plaintiff company, totally disregarding the Alaska Petroleum and Coal Company's rights to this property, its buildings and improvements, and without permission of said company, had a portion of said property located as its terminal grounds and forcibly and without authority entered on said land, occupied same along with affiant's company houses and other improvements; that said plaintiff company failed to show on their maps and profiles filed with the Secretary of Interior the improvements and houses erected by Alaska Petroleum and Coal Company, and an Indian graveyard which is situated on their terminal grounds; that on the 23 day of March, A. D. 1907, said Alaska Petroleum and Coal Company conveyed to the defendant company a right of way for its road over and across its property, and that the right of way granted by this affiant's company crosses said plaintiff's terminal grounds.

An abstract of the property owned by this affiant's company over which plaintiff's terminal

grounds have been located is hereto attached and made a part of this affidavit.

HENRY R. HARRIMAN,

Subscribed and sworn to before me this 29th day of May, A. D. 1907.

[Seal] ROBERT J. BORYER,  
Notary Public for State of Washington, Residing at  
Seattle.

[Endorsed] : 623-A, District Court for the District of Alaska, Division No. 1, Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of Henry R. Harriman. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the District of Alaska, Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER & NORTHWESTERN RAILWAY COMPANY (a Corporation), the KATALLA COMPANY (a Corporation), and M. K. RODGERS,

Defendants.

**Affidavit of Jno. R. Winn.**

United States of America,  
District of Alaska,—ss.

Jno. R. Winn, being first duly sworn, on oath deposes and says: That I am an attorney at law and a member of this bar, and a member of the firm of Winn & Burton, two of the associate counsel for the defendant in the above-entitled action; that I am well acquainted with the facts, affidavits, pleadings and the agreed statement of facts signed by the attorneys for the respective parties to this action, which said agreed statement of facts is filed herewith and hereby referred to and made a part of this affidavit. That on June 2, 1907, the firm of Winn & Burton sent the following telegram to the Commissioner of the General Land Office, Washington, D. C., pertaining to the maps and plats referred to in the pleadings, affidavits and agreed statement of facts herein, to wit:

“Juneau, Alaska, June 2, 1907.

Commissioner General Land Office, Washington, D.  
C.

What is status map terminal sites Alaska Pacific Railway & Terminal Company included in map returned to Juneau office for correction March 28th last. Also status map definite location Copper River

Northwestern Railway Company right of way referred to in your letter April 17th last to Horace F. Clark, Washington, D. C. Wire.

WINN & BURTON,  
Attorneys Copper River Northwestern Railway Company.”

And in reply to said telegram the firm of Winn & Burton received the following telegram, viz.:

“Washington, D. C., June 3-07.

Winn & Burton, Juneau, Alas.

Plat terminal sites one A and one B Controller Bay Alaska Pacific Railway and Terminal Company not approved. Approval March 18th affects road line only map preliminary location Copper River Northwestern accepted April seventeen. No definite location referred to.

R. A. BALLINGER, Comr.”

—which said telegram last above set forth is the same telegram referred to in the said agreed statement of facts signed by the attorneys and counselors respectively of the plaintiff and defendants in said above-entitled cause and referred to herein.

JNO. R. WINN.

Subscribed and sworn to before me this 7th day of June, A. D. 1907.

[Seal]                      NEWARK L. BURTON,  
Notary Public for Alaska, Residing at Juneau, in  
said District.

Received copy of foregoing affidavit this 7th day of June, 1907.

SHACKLEFORD & LYONS,  
Attys. for Plaintiffs.

[Endorsed]: 623-A. District Ct., Dist. of Alaska, Division No. 1. Alaska Pacific Ry. and Terminal Co. vs. Copper River and Northwestern Ry. Co. et al. Affidavit of Jno. R. Winn. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the Territory of Alaska,  
First Division.*

THE ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
THE KATALLA COMPANY (a Corpora-  
tion), and M. K. RODGERS,  
Defendants.

**Affidavit of F. M. Brown.**

United States of America,  
Territory of Alaska,—ss.

F. M. Brown, being first duly sworn deposes and says: He is one of the attorneys for the plaintiff in the above-entitled action and has been at Katalla and at the terminal grounds of the above-named plaintiff company, about three miles westerly from the town of Katalla, most of the time since May 1st, 1907. That said terminal tract consists of thirty-nine and  $54/100$  acres and is known as terminal No. 1-B, on the shore of Katalla Bay. That said terminal tract to affiant's knowledge, has been in the actual peaceable possession of the plaintiff company since affiant's arrival on said ground, to wit, since May 1st, 1907. That said terminal tract is fully represented and described on the plat or map thereof prepared by W. H. Hampton, chief engineer of said plaintiff company. That said terminal tract is actually occupied and improved by said plaintiff company by various buildings, boarding houses, commissary store, offices, warehouses and heavy and substantial railroad trestle and bridges extending from about half way across to Martin Island to a point northerly and across the southeasterly portion of said terminal tract for a distance of about 1400 feet. That there is heavy machinery, engines, pile-drivers and various other tools

and equipment, said improvements aggregating more than one hundred thousand dollars in value, on said terminal tract. That at various times during the month of May, 1907, and particularly on the 16th and 17th days of May, the defendant hired certain men, among others Thomas Caveny, Stephen Pinter, M. Summick and A. Summick, to go upon the westerly portion of said terminal tract of plaintiff with other men, numbering as many as twelve or fifteen, who did dig, excavate, cut down trees and blast with giant powder upon said tract, building and constructing a railroad grade to connect with the railroad bridge and trestle which defendants are constructing on the easterly side of said terminal tract, which said bridging and trestle of defendants is being rapidly driven so as to cross plaintiff's said terminal tract and its piling and railroad bridging thereon. That said men so blasting and excavating on said terminal grounds of plaintiff's have been using heavy charges of giant powder and have blown rocks, stumps and other material over upon some of the tents, buildings and structures occupied by plaintiffs and its employees and said men have been repeatedly notified and warned to cease and desist from said work and remove and remain away therefrom, which they have at all times refused to do and are still working thereon by the orders and directions of defendants. That there is danger from the falling material from said blasting to plaintiff's employees.



That on the 17th day of May, 1907, the plaintiff company by and through its superintendent, Thomas Dwyer, caused a complaint to be filed with the United States Commissioner and ex-officio Justice of the Peace at Katalla against the said Thomas Caveny, Stephen Pinter, M. Summick and A. Summick, under section 67, page 14 of Carter's Alaska Code, alleging trespass of said four men upon said terminal ground, which is in the lawful occupation of plaintiff and its superintendent, Thomas Dwyer. A warrant was issued and a trial of said cause had before said commissioner on the 20th day of May, A. D. 1907, and a full, true and complete report of the proceedings had at said trial were taken down in shorthand and transcribed by G. B. Kile, duly certified, and are hereto attached and made a part hereof. That said commissioner held said plaintiff could not protect its possession in or about said premises without first producing in said commissioner's court due proofs of the organization of said plaintiff corporation in the State of Washington and due proofs of its compliance with the laws of Congress applicable to Alaska as to filing various papers in the office of the Secretary of the District of Alaska, and in the office of the clerk of this court and with the Secretary of the Interior, none of which proofs are in affiant's possession or control, although duly

certified copies of the same have been sent for, but owing to the time required to send out letters and receive back mail in reply thereto, it will be several weeks before said proofs can be received at Katalla.

That defendants are proceeding recklessly and with a large force of men in total disregard of plaintiff's rights in the premises, and unless immediately restrained by the order of this Court, they will enter upon plaintiff's said terminal ground and right of way by force and violence and with a strong force of men, and either succeed in taking and wresting said property from plaintiff, or a serious conflict will ensue by reason of the plaintiff defending its said actual possession and lawful occupation of said premises.

FRED M. BROWN.

Subscribed and sworn to before me this 25 day of May, A. D. 1907.

[Seal]

A. G. WILLIAMS,  
Notary Public.

[Endorsed]: No. 623-A. In the District Court for the Territory of Alaska, First Division. Alaska Pacific Ry. & Terminal Company, Plaintiff, vs. Copper River & Northwestern Ry. Co. et al., Defendants. Affidavit of F. M. Brown. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Har-

old Preston, Shackelford & Lyons and Fred M. Brown, Attorneys for Plaintiffs.

---

*In the District Court of the Territory of Alaska,  
Third Division.*

No. —.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY, Inc.,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY, Inc.,

**Affidavit of H. R. Gabriel.**

District of Alaska,  
Kayak Precinct,—ss.

H. R. Gabriel, being first duly sworn, upon his oath deposes and says: That he is a resident of Katalla, Alaska, and is resident engineer of the company constructing the defendant's road; that he is acquainted with the country in and around Katalla and the defendant's route for its right of way as filed with the Secretary of the Interior and the Land Office of the Territory of Alaska, and with the route and terminal grounds of the plaintiff corporation, and that he considers it impossible to build or construct the defendant's road without crossing plaintiff's ground at such point and points where said

defendant's right of way as filed with the Secretary of the Interior crosses said plaintiff's ground as filed with the Secretary of the Interior; that the defendant's road begins at Palm Point, about 2 miles west of Katalla, from which point it parallels the Pacific Ocean on the left and the plaintiff's right of way at or near the base of a high mountain chain to its right to a point at or near the plaintiff's terminal grounds, situated about 3 miles west of Katalla in a pass or defile opposite Martin Islands; that said defendant corporation begun grading, clearing and piling its right of way for roadbed at Palm Point, at which place it is necessary to build a wharf and breakwater for the purposes of loading and unloading material for said road and for the receiving and sending out of freight, etc.; that before the aforesaid defendant company can build said wharf, breakwater or equip its right of way for use, it is necessary that said defendant have the free, continued and uninterrupted use of its right of way to a point or points beyond the plaintiff's terminal grounds for the purpose of getting stone, gravel, dirt and timber to construct said road, wharf and breakwater, and to get its machinery, now en route to Katalla, to such point or points above plaintiff's terminal grounds for the use of getting out said stone, dirt and timber and conveying same to points along its right of way to be used for the construc-

tion and completion of said defendant's road, and that it is impossible for the defendant to reach said point without passing through and over the plaintiff's terminal grounds at such point and points designated on its right of way over the terminal grounds of said plaintiff, and that said company now has a large force of men working on its road and has contracted for many more men, each boat bringing from 25 to 50 men; that 200 more men are expected on the boat arriving about the latter part of May, and that if this defendant company is not permitted to use its right of way continuously and at all times, and given the free and uninterrupted use of said right of way as shown on its profile or map filed, it will be delayed in the construction of its road and it will be impossible to give employment to all of its men, and that if said employees are discharged or laid off, they will possibly leave the country and the defendant will be unable to secure other men and sufficient men to construct as much of its road as is required each year and will be unable to do very little work toward the construction of its road, wharf and breakwater this season.

H. R. GABRIEL.

Subscribed and sworn to before me this the 16th day of May, A. D. 1907.

[Seal of G. C. Britton, United States Commissioner,  
District of Alaska.]

G. C. BRITTON,  
United States Commissioner for Kayak Precinct,  
Alaska.

[Endorsement]: 632-A. District Court for the District of Alaska. Alaska Pacific Ry. and Terminal Co. vs. Copper River and Northwestern Ry. Co. et al. Affidavit of H. R. Gabriel. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court of the Territory of Alaska,  
Third Division.*

No. —.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY, Inc.,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY, Inc.,

**Affidavit of H. A. McClure.**

District of Alaska,  
Kayak Precinct,—ss.

H. A. McClure, being first duly sworn, upon his oath, deposes and says: That he is a resident of Katalla, Alaska, and is superintendent of construction of the company constructing defendant's road; that he is acquainted with the country in and around Katalla, and that the defendant's route for its right of way as filed with the Secretary of the Interior and the Land Office of the Territory of Alaska, and with the route and terminal grounds of the plaintiff corporation, and that he considers it impossible to build or construct the defendant's road without crossing plaintiff's ground at such point and points where said defendant's right of way as filed with the Secretary of the Interior crosses said plaintiff's ground as filed with the Secretary of the Interior; that the defendant's road begins at Palm Point, about 2 miles west of Katalla, from which point it parallels the Pacific Ocean on the left and the plaintiff's right of way at or near the base of a high mountain chain to its right to a point at or near the plaintiff's terminal grounds, situated about three miles west of Katalla in a pass or defile opposite Martin Islands; that said defendant corporation begun grading,

clearing and piling its right of way for roadbed at Palm Point, at which place it is necessary to build a wharf and breakwater for the purpose of loading and unloading material, for said road, and for the receiving and sending out of freight, etc.; that before the aforesaid defendant company can build said wharf, breakwater or equip its right of way for use, it is necessary that said defendant have the free and uninterrupted use of its right of way to a point or points beyond the plaintiff's terminal grounds for the purpose of getting stone, gravel, dirt and timber to construct said road, wharf and breakwater, and to get its machinery, now on the way to Katalla, to such point or points above the plaintiff's terminal grounds for the purpose of getting out said stone, dirt, timber and conveying same to points along its right of way to be used for the construction and completion of said defendant's road, and that it is impossible for the defendant to reach said point without passing through and over the plaintiff's terminal grounds at such point or points designated on its right of way over the terminal grounds of said plaintiff; that said defendant company now has a large force of men working on its road and has contracted for many more, each boat bringing between 25 and 50 men; that 200 men are expected on the boat arriving about the latter part of May; that if this defendant company is not permitted to use its



right of way continuously and at all times, and given the free and uninterrupted use of said right of way as shown on its profile or map filed, it will be delayed in the construction of its road and it will be impossible to give employment to all of its men, and that if said employees are discharged or laid off, they will possibly leave the country and the defendant will be unable to secure other men and sufficient men to construct as much of its road as is required each year, and will be unable to do very little work toward the construction of its road, wharf and break-water this season.

H. A. McCLURE.

Subscribed and sworn to before me this the 16th day of May, A. D. 1907.

G. C. BRITTON,

United States Commissioner for Kayak Precinct,  
Alaska.

[Seal of United States Commissioner.]

[Endorsement]: 623-A. District Court for the District of Alaska, Division No. 1. Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of H. A. McClure. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

**Affidavit of H. R. Gabriel.****KATALLA COMPANY.**

Katalla, Alaska.

H. R. Gabriel, being duly sworn, says that he is the resident engineer of the Katalla Company; that on May 23d, 1907, under directions of the chief engineer, he made a survey of the grounds claimed by the Alaska Pacific Railway and Terminal Company as terminal grounds, designated as "Terminal Tract No. 1-B"; he states that he was accompanied by J. Vandiver, R. B. Pepper and H. Carter; he further deposes and says that there is an apparent omission of certain log-houses and Indian burying-ground, which are not noted on the filing map, of which a certified copy has been examined by me (Alaska Pacific Railway and Terminal Tracts No. 1-A, Amended, and No. L-B original, received and filed in the United States Land Office at Juneau, Alaska, December 20th, 1906). From the indications it is evident that the aforesaid log-houses and burying-grounds have been established on the ground, prior to the dates of the survey for the track of land here mentioned.

He also states that the north line, that is to say, the line connecting corners 2 and 3, was evidently

never run out, as there are neither blazes or line cuttings to be found on the grounds.

H. R. GABRIEL,  
Resident Engineer.

Subscribed and sworn to before me this 25th day of May, 1907.

G. C. BRITTON,  
United States Commissioner.

[G. C. Britton, United States Commissioner, District of Alaska—Seal]

[Endorsement]: 623-A. H. R. Gabriel. District Court for the District of Alaska. Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of H. R. Gabriel. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —A.

THE ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Complainant,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
Defendant.

**Agreed Statement of Facts.**

It is stipulated between the parties hereto that for the purpose of the hearing on the order to show cause why an injunction should not issue against the defendant, the following facts are agreed to:

I.

The Alaska Pacific Railway and Terminal Company filed copies of its original articles of incorporation with the Register and Receiver of the U. S. Land Office at Juneau, Alaska, January 20, 1906, and said articles were by that office transmitted to the General Land Office of the United States under date of January 23, 1906.

The Commissioner of the General Land Office declined to accept said articles of incorporation for filing, and by letter of February 13, 1906, addressed

to the Secretary of the Alaska Pacific Railway and Terminal Company, gave his reasons therefor as follows:

“The company, under said articles, is authorized inter alia ‘to lay out, construct, furnish and equip a railroad line and railroad from a point on the northerly part of Martin’s Island in the District of Alaska by some practicable, convenient route in a northerly direction from the Pacific Ocean or some bay or inlet thereof; and also to extend, lay out, construct, furnish, and equip said railroad line and railroad from said point at or near the northerly point of Martin’s Island to such other point and points on the waters of the Pacific Ocean and the branches and inlets thereof as may be hereafter determined upon by said corporation; and also to lay out, construct, furnish and equip such branch railroads and railroad lines connecting said main railroad lines with other points on Martin’s Island and other points in the interior of the District of Alaska, as may be hereafter determined by said corporation.

“The Acting Secretary on March 15, 1902, in considering the articles of incorporation of the Chelan Transportation and Smelting Co., organized under the laws of the State of Washington, said:

“The articles do not contain the information essential to articles of incorporation of railroad companies, to wit, the points from and to which the line

of road is to be constructed and maintained, the counties through which the road is to pass, and the estimated length thereof.'

While this case was considered under the provisions of the Act of March 3, 1875, the same ruling applies to the articles filed under the Act of May 14, 1898, as the language defining the beneficiaries of said acts is similar.

On January 3, 1906, in the case of the Bessie Gold Company which company is organized under the laws of the State of Washington for the purpose of operating in the District of Alaska, the Acting Secretary said:

'It is required in cases of railroads applying for right of way, as well as in the case of wagon or toll roads, that the articles of incorporation shall show the termini between which the company is authorized by such articles to construct its road.'

Under such rulings of the Department, the articles under consideration cannot be submitted to the Secretary of the Interior for approval, and I hereby decline to do so. In order to correct said articles so that they may be accepted for filing, the company should amend the same so as to give the termini of the line of road which it intends to construct, and the estimated length thereof, and a certified copy of said amended articles should be furnished this office."

On February 24, 1906, amended articles of incorporation of the Alaska Pacific Railway and Terminal Company, complying with the requirements of the foregoing decision of the Secretary of the Interior, were filed in the office of the Secretary of the State of Washington, and on April 6, 1906, certified copy of said amended articles were filed with and accepted by the Secretary of the Interior.

## II.

That the map of definite location of the right of way of the plaintiff was filed in the local U. S. Land Office at Juneau, Alaska, December 20, 1906, and forwarded to the General Land Office at Washington, D. C., on March 18, 1907, the Secretary of the Interior making the following indorsement thereon:

“Department of the Interior, March 18, 1907. Approved subject to all valid existing rights. James A. Garfield, Secretary.”

## III.

That thereafter said map of definite location of said right of way was returned to the local land Office accompanied by a letter, a copy of which is hereto attached and marked exhibit “A”; this map was returned to the Alaska Pacific Railway and Terminal Company by the Register of the United States Land Office at Juneau, Alaska, after its receipt by him

from the Commissioner of the General Land Office, and after making such corrections as plaintiff deemed necessary pursuant to the said letter, was re-deposited by the plaintiff, on the 29th day of May, 1907, in the office of the Register and Receiver at Juneau, Alaska, and is now in the custody of the said Register and Receiver, being held at plaintiff's request for use upon this hearing; that the plaintiff while agreeing to the statement of facts in this paragraph contained, reserves the right to urge such objections as it may see fit upon this hearing to the admission of the said letter of the Commissioner of the General Land Office and the statement in this paragraph contained.

#### IV.

That a map of preliminary survey of the Copper River and Northwestern Railway Company across the lands in controversy was filed in the office of the Commissioner of the United States Land Office at Washington, D. C. on the 26th day of January, 1907, and transmitted by that office to the Commissioner of the General Land Office at Washington, D. C. on the 28th day of January, and on March 22, 1907, was indorsed by the Commissioner of the General Land Office as follows, to wit:

“Washington, D. C., General Land Office, March 22, 1907. This plat by letter of this date to R & R, Juneau, Alaska, was accepted for filing in this office



under the provisions of Section 4, Act of May 14, 1898." But the plaintiff reserves the right to urge any objection upon the hearing herein to the introduction of said map or to any of the facts stated in this paragraph.

V.

That the map of definite location of the right of way of said Copper River and Northwestern Railway Company across the lands in dispute was filed in the United States Land Office at Juneau, Alaska, on the 5th day of March, 1907, and was mailed by that office to the Commissioner of the General Land Office on the 13th day of April, 1907; that this map was lost and cannot be found in the office of the Commissioner of the General Land Office at Washington, D. C.

VI.

That prior to the 3d day of June, 1907, the firm of Winn & Burton, attorneys at law, and one of the attorneys for defendants herein, upon telegraphic inquiry to R. A. Ballinger, Commissioner of the General Land Office at Washington, D. C., received in response to said telegram the following telegram from R. A. Ballinger: "Plat terminal sites 1-A and 1-B Controller Bay, Alaska Pacific Railway and Terminal Company not approved. Approval March 18 affects road line only. Map preliminary location Copper River & Northwestern accepted April 17. No definite location referred to. R. A. Ballinger,

Comr.” And it is stipulated that said telegram may be offered in evidence subject to the objection of the plaintiff, the same as if the original signature of R. A. Ballinger, Commissioner, were identified and proved and with the same force and effect as if the said R. A. Ballinger had signed and transmitted to the said attorneys with his original signature over the word “Commissioner” a letter of similar words and import. That the plaintiff reserves the right to urge any objection whatsoever it may see fit at the hearing to the admission of the said telegram in evidence therein, as above stated.

## VII.

Either party herein shall have the right at the hearing to offer in evidence to the Court any of the maps above referred to or other maps with the indorsements thereon, and to use the same as evidence subject to such objections as counsel may see fit to urge at said hearing, and may offer any other or additional affidavit or documentary evidence of whatever nature they may desire, subject to such objections as may be made at the hearing.

And it is further stipulated that W. H. Hampton may be called and orally examined on behalf of the plaintiff at said hearing, and M. K. Rogers may be

called and orally examined at said hearing on behalf of the defendants.

SHACKLEFORD & LYONS,  
Attorneys for Plaintiff.

BOGLE, HARDIN & SPOONER,  
WINN & BURTON,  
Attorneys for Defendants.

**Exhibit "A."**

ALASKA PAC. RY. & TERMINAL COMPANY.

March 28, 1907.

Returning Map and Field Notes for Correction.  
Register & Receiver, Juneau, Alaska.

Sirs: I enclose herewith map and field notes in duplicate filed by the Alaska Pacific Railway and Terminal Company showing the definite location of the Katalla & Bering Lake Division from a point on Whale Island 20 miles northeastwardly over un-surveyed lands to a point on Shepard's Creek. This map was approved by the Secretary of the Interior March 18, 1907, with the understanding that the discrepancies existing between the map and the forms thereon, and the field notes should be corrected by the company. These discrepancies exist as to the tie connection of station 3 plus 05 and the U. S. L. M. No. 572; as to the tie connection of the 6 mile station with R. P.; as to station 830 plus 56 with U. S. G. S.

B. M.; and as to the terminal 20 mile station with U. S. L. M. Kayak No. 3.

You will forward the map and field-notes in duplicate to the company and request it to make the necessary corrections at as early a date as possible and to return them to you and you will forward them to this office for further examination.

Very respectfully,

R. A. BALLINGER,

Commissioner.

[Endorsed]: No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff, vs. Copper River & Northwestern Railway Company, Defendant. Agreement Statement of Facts. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

**Affidavit of John Krey.**

KATALLA COMPANY.

Katalla, Alaska.

John Krey, being duly sworn, says that he is the chief engineer of the Katalla Company; that on May 23d, 1907, he made a survey of the grounds claimed by the Alaska Pacific Railway and Terminal Company as Terminal Grounds, designated as "Terminal

Track No. 1B''; he states that he was accompanied by H. R. Gabriel; J. Vandiver; R. B. Pepper and H. Carter; he further deposes and says that there is an apparent omission of certain log houses and Indian Burying Ground, which are not noted on the Filing Map, of which a certified copy is in his possession (Alaska Pacific Railway & Terminal Tracks No. 1 A, amended and No. 1 B original, received and filed in the United States Land Office in Juneau, Alaska, December 20th, 1906). From the indications, it is evident that the aforesaid log-houses and burying-grounds have been established on the ground, prior to the dates of the survey for the tract of land here mentioned.

He also states that the north line—that is to say, the line connecting corners 2 and 3 was evidently never run out, as there are neither blazes or line cuttings to be found on the ground.

JOHN KREY,  
Chief Engineer.

Subscribed and sworn to before me this 25th day of May, 1907.

[Seal]

G. C. BRITTON,  
United States Commissioner.

[Endorsed]: 623-A. District Court, Div. No. 1, District of Alaska. Alaska Pacific Railway & Terminal Co. vs. Copper River & Northwestern Ry. Co.

et al. Affidavit of John Krey. Filed Jun. 8, 1907.  
C. S. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the Territory of Alaska,  
First Division.*

ALASKA-PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER & N. W. RY. CO. et al.

**Affidavit of George T. Barrett.**

United States of America,  
District of Alaska,—ss.

George T. Barrett, being first duly sworn, deposes and says: That he is a citizen of the United States of the age of 55 years. That he settled at the point of land just opposite Martin Island, near the southern end of Kattalla Bay, the District of Alaska, on or about the year 1881 and that he has had a continuous knowledge of said land ever since said time. That soon after he settled upon said land, he donated a tract of forty acres theretofore claimed by him by virtue of such settlement, to the Indians for a burying ground and for residence purposes. That immediately thereafter the said land was appropriated by said Indians for said above-named pur-

poses, and has ever since been used by them for said purposes. That he is acquainted with the land claimed by the plaintiff, Alaska Pacific Railway and Terminal Company, a corporation, for terminal grounds. That all of said forty acres so donated to and used by said Indians for burial and residence purposes is within the said terminal grounds claimed by said plaintiff corporation. That many of the Indian dead have been buried in and their bodies now remain buried in said grounds. That said grounds have been in the possession of said Indians, claimed and used by them for said above-named purposes for over twenty-four years last past, and, as affiant is informed and verily believes, the said plaintiff corporation is fully informed thereof, but has wholly failed to make known the facts to the Interior Department at any time.

GEO. T. BARRETT.

Subscribed and sworn to before me this 28th day of May, A. D. 1907.

G. C. BRITTON,  
U. S. Commissioner.

[Seal of G. C. Britton, United States Commissioner,  
District of Alaska.]

Received copy of foregoing affidavit this 7th day of June, 1907.

L. P. SHACKLEFORD.

[Endorsement]: 623-A. District Court for the District of Alaska, Division No. 1. Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of George T. Barrett. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

**Affidavit of Clark Davis.**

United States of America,  
District of Alaska,—ss.

Clark Davis, being first duly sworn, deposes and says: That this affidavit is intended to be supplemental to an affidavit heretofore made by him in the matter of petroleum placer claims named "Oil King" located Nov. 21, 1902, by W. A. Abernathy and others, and "Standard Oil" located Nov. 23, 1902 by W. A. Abernathy and others. That the said claims are now held or owned by the "Alaska Petroleum and Coal Company," a corporation. That he is the duly constituted agent of and for said company at Katalla, Alaska.

That before purchasing said claims for said company, he, said affiant, had conversations with W. A. Abernathy and others of the original locators of said petroleum claims, and was informed by each of them that before locating the same, a discovery of petroleum was made upon each of said claims, such dis-



covery consisting of strong seepages of petroleum oil and gas from crevices and depressions in the rock covering the surface thereof.

That he first became acquainted with the ground embraced in said claims in or about the month of May, A. D. 1905, and has since had a continuous knowledge thereof.

That he has at different times observed the presence of oil upon each of said claims, and that petroleum oil exudes from the surface of each of said claims, in sufficient quantity and of such a quality as to justify a reasonable man in the expenditure of the money necessary in the further development of said claims. That in the opinion of said affiant, said ground, embraced in said two claims is chiefly valuable for the petroleum oil therein, and has no value for agricultural or non-mineral purposes.

That he has been at Kattalla during the mining season of each year since 1905, and during that time he has been and now is boring oil wells and developing oil claims in the vicinity of said two above name claims.

That, during each and every year since the location of said two claims, the annual assessment work required by law has been done and performed thereon, and the said two claims are now valid subsisting mining claims, under the laws of the United States

relating to the location and entry of petroleum lands of the United States.

CLARK DAVIS.

Subscribed and sworn to before me this 28th day of May, 1907.

G. C. BRITTON,  
U. S. Commissioner.

[Seal of G. C. Britton, United States Commissioner,  
District of Alaska.]

[Endorsements]: 623-A. District Court for District of Alaska, Div. No. 1. Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Affidavit of Clark Davis. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the Territory of Alaska,  
First Division.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL CO. (a Corporation),

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN  
RY. CO. (a Corporation), THE KATALLA  
COMPANY (a Corporation), and M. K.  
ROGERS,

Defendants.

**Affidavit of Thomas Dwyer.**

United States of America,  
Territory of Alaska,—ss.

Thomas Dwyer, being first duly sworn, deposes and says that he is the superintendent in charge of construction, of the above-named plaintiff company, and is now and since the first day of March, 1907, has been in the actual possession and occupancy of the terminal tract of the plaintiff company No. 1-B on the mainland on the shore of Katalla Bay, Alaska, northerly from Martin Island for said company. That affiant has for more than twenty-five years been actively engaged in the practical work and superintendency of railroad construction. That affiant arrived upon said ground in charge of the outfit of the plaintiff company about the first of March, 1907, and ever since said time and now is in the actual possession and occupation of said ground for said company. When affiant arrived on the said ground about March 1st, 1907, he found the same in the actual possession and occupation of Mr. A. M. Keating, an engineer in the employ of the plaintiff company, who was upon said ground with a number of men and that the said plaintiff company at said time was in the actual and peaceable possession of said terminal ground, and the whole thereof and ever

since has been and now is so in possession except for the wrongful and unlawful acts of the defendants, their agents, servants and employees hereinafter alleged. That since taking charge of said terminal ground the plaintiff company, under the supervision of affiant, has erected upon said terminal ground a boarding-house 30x75 feet, a seven room two-story frame building used for offices, a commissary store, and various other buildings and structures, including a double track railroad trestle some 1400 feet in length. That the plaintiff company has erected and is operating a sawmill immediately adjoining said terminal ground, with a capacity of 30,000 feet per day, and has five complete sawmill outfits and twelve pile-driver and logging engines and a large quantity of tools, equipment, supplies, and is employing over 200 men and a number of horses, and ever since said date, to wit, March 1st, has been and now is actively and diligently constructing its line of railroad from said terminal ground to the coal fields about fifteen miles northeast therefrom, and up the Copper River. That about the 29th day of April, 1907, the defendants, their agents, servants and employees came upon said terminal ground so in the actual and peaceable occupation of the plaintiff company and began cutting timber thereon and blasting and excavating for a railroad grade on the westerly side or portion of plaintiff's said terminal ground. That immediately

thereupon affiant personally, and through other officers and agents of the plaintiff company notified the said defendants, their agents and employees to immediately remove from said terminal ground and premises and to remain away therefrom. At the same time, to wit, about April 29th, affiant caused three typewritten trespass notices to be posted in three conspicuous places on said terminal ground, securely fastened in wooden boxes and upon wooden posts, to wit: One in the southerly corner of said terminal ground, one about 400 feet northerly and near the easterly side line of said terminal ground, and one on the southwesterly portion of said terminal ground and said notices have remained so posted upon said ground. That said terminal ground contains an area of thirty-nine and 54/100 acres, and is all actually and reasonably needed by the plaintiff company for the future needs of said company for railroad terminal purposes in the construction, operation and maintenance of its said railroad. That there will actually and reasonably need to be constructed and maintained upon said terminal ground a large number of railroad tracks, sidetracks, switches, switch-yards, machine-shops, round-houses, warehouses, coal-bunkers and other structures for the proper operation of said railroad. That defendants are constructing a railroad trestle running from a point on Katalla Bay about one mile

easterly from plaintiff's said terminal ground, in a westerly direction; and on or about the 16th day of May, 1907, defendant's said railroad trestle had reached the easterly side line of plaintiff's right of way adjoining and on the westerly side of plaintiff's said terminal ground.

That on the said 16th day of May, affiant, together with F. M. Brown, attorney for the plaintiff company, personally notified the foreman and men in charge of the pile-driver on defendant's said trestle that they must not cross the said line over or upon the said right of way and terminal ground so in the possession of the plaintiff company and the said defendants, their agents and employees were shown and their attention was particularly called to the stakes and boundary lines of plaintiff's said right of way and terminal ground; that defendants, their agents and employees disregarding the said notice and warning given them by affiant as aforesaid, moved their said pile-driver across said line and began driving piles upon plaintiff's said right of way at a point within about seventy-five feet of plaintiff's double track railroad trestle near the easterly side line of plaintiff's said terminal grounds. That owing to an accident to defendant's said pile driver at this point they desisted work, driving said trestle over across and upon plaintiff's terminal ground and railroad trestle, but that defendants, their agents and employees are now dili-

gently engaged in reconstructing said pile-driver, and within a day or two from this date, to wit, May 24th, 1907, threaten to and will endeavor to drive their said railroad trestle over across and upon plaintiff's said right of way, terminal ground and railroad trestle.

THOS. DWYER.

Subscribed and sworn to before me this 24th day of May, A. D. 1907.

[Notarial Seal]

FRED M. BROWN.

Notary Public.

[Endorsement]: No. 623-A. In the District Court for the Territory of Alaska, First Division. Alaska Pacific Railway & Terminal Company, Plaintiff, vs. Copper River & Northwestern Ry. Co. et al., Defendants. Affidavit of Thos. Dwyer. Filed Jun. 8, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy. Harold Preston, Shackelford & Lyons, and Fred M. Brown, Attorneys for Plaintiff.

*In the District Court for the Territory of Alaska,  
First Division.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL CO. (a Corporation),  
Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RY.  
CO. (a Corporation), THE KATALLA COM-  
PANY (a Corporation), and M. K. ROG-  
ERS,  
Defendants.

**Affidavit of A. M. Keating.**

United States of America,  
Territory of Alaska,—ss.

A. M. Keating, being first duly sworn, deposes and says that he is a civil engineer and first assistant to the chief engineer of the above-named plaintiff corporation. That he has had about sixteen years' experience as a surveyor and civil engineer. That about the 1st of September, A. D. 1905, affiant first came to Katalla, Alaska, with W. H. Hampton, chief engineer of the plaintiff company and came upon the ground known as the terminal ground of the Alaska Pacific Railway and Terminal Company on



the mainland of Katalla Bay, just northerly from Martin Island, Alaska, comprising thirty-nine and 54/100 acres and designated on the plat of said terminal ground as "terminal ground No. 1-B." That when affiant arrived on said terminal ground, about the first of September, 1905, said terminal ground had been located for the plaintiff company, staked and the boundaries thereof marked on the ground substantially the same as now staked and claimed. Said location and staking of said terminal ground had been made and performed by M. W. Bruner and Webster Brown and other employees of the plaintiff company in the month of June, 1905, as affiant is informed and believes. That affiant was over and upon said terminal grounds from about the first of September, 1905, until about the first of November, 1905, together with some five or six other men as officers and employees of said plaintiff company and said terminal ground was not occupied during said time, nor in the possession of any persons or persons whatsoever except the said officers and employees of said plaintiff company.

That when affiant first came upon said ground as aforesaid there were four or five old deserted log cabins situated thereon, and one small frame building, all of which buildings were in an abandoned and uninhabitable condition and affiant is informed

and believes were years before occupied by employees of the Alaska Commercial Company and by a few Indians who occasionally camped therein. That in addition to said five or six men, officers and employees of said plaintiff company who were surveying and working upon said ground in the fall of 1905, Dr. M. W. Bruner, Webster Brown, a civil engineer, and seven men were also at work for the plaintiff company during the summer and fall of 1905 from said terminal ground to various points up the Copper River.

That affiant returned to said terminal ground of the plaintiff company about June 24th, 1906, and found said ground and said buildings in the same condition as they were in when affiant left Alaska about November 1st, 1905. That affiant worked for said plaintiff company upon said ground and did various work surveying in the vicinity thereof, and at various points on Copper River from June, 1906, until about the 1st of December, 1906. That during all of said time said terminal grounds were claimed by and in the possession of the said plaintiff company who, during said time, employed, including officers, from ten to eighteen men in said work of surveying and no one else during any of said time, except the said representatives of the plaintiff company were occupying or in possession of said

terminal grounds or any portion thereof, except that in the month of July, 1906, a man by the name of Peters stopped in one of said cabins for about twenty days and was cutting some timber as he claimed for one Clark Davis or the Alaska Petroleum and Coal Company.

That on or about the 7th day of February, 1907, affiant with five men came from Seattle and went upon said terminal ground of the plaintiff company and entered into actual quiet and peaceable possession thereof, there being no one occupying or in possession of said terminal ground or any portion thereof. That said premises were in exactly the same condition as when affiant left in December, 1906, except that a roof on one of these old log buildings had been repaired.

That affiant has remained upon said premises as an engineer in the employ of the plaintiff company ever since the 7th of February, 1907, and is now residing thereon and there are about forty-five engineers and assistants employed by the plaintiff company on said terminal grounds and surveying a line of railroad therefrom to points on Copper River. That the said plaintiff company has had since February 7th last a large force of men working upon and adjacent to said terminal ground, and now has about two hundred men so employed. The plaintiff company has constructed upon said terminal

grounds a boarding house, 30x75 feet, a two-story office building of seven rooms, and various other structures, warehouses, commissary store; has a sawmill, with a capacity of 30,000 feet per day, immediately adjacent to said terminal ground and has constructed a double track railroad trestle from a point in the waters of Katalla Bay over, across and upon said terminal grounds, a distance of about fourteen hundred feet. That plaintiff company has five complete sawmill outfits, twelve pile-driver and logging engines and various other tools and equipment for building and constructing its line of railroad and has expended in said work, as affiant is informed and believes, more than \$150,000. That about the 29th of April, 1907, three trespass notices were posted in three conspicuous places on said terminal grounds and have so remained posted. That about said time, to wit, April 29th, 1907, the defendants and their agents, servants and employees began coming upon said terminal grounds, blasting and excavating thereon and attempting to construct their railroad trestle over across and upon the said double track railroad trestle of plaintiff's and upon the said terminal ground. That said men have many times since April 29th and prior thereto been warned and given personal notice to immediately remove from said terminal ground and remain away therefrom, but that defendants and their agents, servants

and employees still persist in going upon the said terminal grounds of plaintiff and are rapidly constructing and building their railroad trestle to a point about 100 feet easterly from the said double track railroad trestle of plaintiff and are threatening to and will, unless restrained by order of the Court, go upon and construct heavy, substantial and permanent trestle upon said terminal ground and impede and interfere with plaintiff's lawful possession of said terminal ground and its said railroad trestle and other structures. That all of said terminal ground of plaintiff is actually and reasonably necessary for its use and for its reasonable future needs in operating and maintaining its railroad line from said terminal to the coal fields, about fifteen miles from its said terminal and to points on Copper River where it is building and constructing its railroad. That there will actually and reasonably needed to be constructed, operated and maintained upon said terminal ground numerous side tracks, switches, switchyards, machine-shops, roundhouses, warehouses, commissary stores, coal-bunkers, and other structures and improvements, and that said tract of thirty-nine and 54/100 acres is reasonably and necessarily required for said purposes.

That affiant is familiar with every portion of said terminal ground and of the territory and land outlying on all sides thereof as shown upon the topo-

graphical map prepared under the supervision of W. H. Hampton, chief engineer of plaintiff company marked "Topographical map of the Alaska Pacific Railway and Terminal Company, showing its terminal ground No. 1-B and the topography of the land northerly, easterly and westerly of said terminal ground." That affiant has examined said topographical map and knows that the same accurately and correctly shows and represents the topography of the land which it purports to represent. That the topography of said land is such that the defendants may easily and inexpensively and conveniently construct a line of railroad running in a northerly direction around and beyond the northerly boundary line of plaintiff's said terminal ground, and thus reach by their railroad line any point or points westerly thereof upon the Copper River or to such place or places as defendants may desire to construct a railroad. That defendant's can cross plaintiff's main track and right of way at grade with their line of railroad at a point near the easterly end of Lake Kahunta, and by falling around the southerly side of the low hills and across plaintiff's terminal tracks just northerly of plaintiff's terminal ground by an overhead crossing and reach any point to the westward thereof by a grade of less than one per cent, and by so doing will avoid all heavy rock cuts, whereas, by the route they are now threaten-

ing to go over, across and upon plaintiff's terminal ground, defendants will be compelled to make a cut about thirty feet deep through solid rock for a distance of about two miles.

A. M. KEATING.

Subscribed and sworn to before me this 24th day of May, A. D. 1907.

[Seal of Notary]

FRED M. BROWN,  
Notary Public.

---

*In the District Court for the Territory of Alaska,  
First Division.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RY.  
CO. (a Corporation), THE KATALLA COM-  
PANY (a Corporation), and M. K. ROG-  
ERS,

Defendants.

**Affidavit of E. Lissner, J. D. Smith, J. M. Hamilton,  
F. W. Allen.**

United States of America,  
Territory of Alaska,—ss.

E. Lissner, J. D. Smith, J. M. Hamilton and F. W. Allen, being first duly sworn, each for himself, and no one for the other, deposes and says that he is a civil engineer in the employ of the above-named plaintiff company and is now residing upon the terminal ground No. 1-B of said plaintiff company on Katalla Bay, Alaska. That affiant is personally familiar with the said terminal ground and the land adjacent thereto. That affiant has read the within and foregoing affidavit of A. M. Keating, first assistant engineer, and affiant says that he has personal knowledge of the facts alleged in said affidavit of said Keating relative to the improvements upon said terminal ground for its reasonable future needs for railroad terminal purposes, and the facts relative to the topography of said terminal ground and the ground lying immediately northerly, easterly and westerly thereof, and the grade which a railroad line can be constructed from the easterly end of Lake Kahuntla and around the northerly side of plaintiff's terminal ground in a westerly direction,



and affiant says that all of the facts so stated and alleged by said Keating in his said affidavit are true.

E. LISSNER.

J. D. SMITH.

J. M. HAMILTON.

F. W. ALLEN.

Subscribed and sworn to before me this 24th day of May, A. D. 1907.

[Notarial Seal]

FRED M. BROWN,

Notary Public.

[Endorsed]: No. 623-A. In the District Court for the Territory of Alaska, First Division. Alaska Pacific Ry. and Terminal Company, Plaintiff, vs. Copper River & Northwestern Ry. Co. et al., Defendant. Affidavits of A. M. Keating, E. Lissner, J. D. Smith, J. M. Hamilton and F. W. Allen. Filed Jun. 8, 1907. C. C. Page. By A. W. Fox, Deputy. Harold Preston, Shackelford & Lyons and Fred M. Brown, Attorneys for Plaintiff.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

THE ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Complainant,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY et al.,  
Defendants.

**Affidavit of Jno. R. Winn.**

United States of America,  
District of Alaska,—ss.

Jno. R. Winn, being first duly sworn, on oath says: I am attorney at law and member of this bar, and a member of the firm of Winn & Burton, and one of the attorneys for the above-named defendants; that on the 8th day of June, 1907, the firm of Winn & Burton received a telegram from Horace F. Clark of Washington, D. C., one of the attorneys and representatives of the above-named defendants, which said telegram relates to the map of definite survey of the first 29 miles of railroad of the above-named defend-

ant company, and which said telegram reads as follows, to wit:

“Washington, D. C., June 8th-07.

Winn & Burton, Juneau, Alas.

Maps filed March fifth first twenty-nine miles received by commissioner yesterday.

HORACE F. CLARK.”

That the aforesaid map of definite location and survey covers that portion of defendant's right of way and tract that is claimed to cross Terminal Tract I B of the plaintiff company.

JNO. R. WINN.

Subscribed and sworn to before me this 10th day of June, A. D. 1907.

NEWARK L. BURTON,  
Notary Public for Alaska.

[Notarial Seal of Newark L. Burton.]

[Endorsements]: No. 623-A. Alaska Pacific Ry. & Terminal Co., a Corporation, vs .The Copper River & Northwestern Ry. Co. et al. Affidavit of Jno. R. Winn. Filed Jun. 10, 1907. C. C. Page, Clerk. By E. W. Pettit, Asst.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants.

### **Order Denying Injunction.**

This order coming on to be heard this 8th day of June, A. D. 1907, upon the order heretofore entered requiring defendants to show cause why an injunction should not be issued pendente lite as prayed for in the amended complaint herein, Messrs. Shackelford & Lyons appearing for the plaintiff and Messrs. Winn & Burton and W. H. Bogle, Esquire, appearing for the defendants and the Court having duly considered the pleadings herein and the proofs submitted upon behalf of the defendants as well as of plaintiff, and the arguments of the attorneys of all of the parties hereto and being duly advised in the

premises, and it appearing to the Court that the plaintiff is not entitled to restrain or enjoin the defendants from the construction of a railroad across the lands described in the pleadings and across the right of way claimed by the plaintiff.

It is hereby ordered, adjudged and decreed that the application of the plaintiff for an injunction pendente lite be, and the same is hereby, denied, to which ruling of the Court plaintiff excepts.

Done in open court this 12 day of June, A. D. 1907.

JAMES WICKERSHAM,

Judge.

[Endorsements]: 623-A. In the District Court for the District of Alaska. Alaska Pacific Ry. & Terminal Co. vs. Copper River & Northwestern Ry. Co. et al. Order. Filed Jun. 12, 1907. C. C. Page, Clerk. By R. E. Robertson, Asst.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY,

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY AND TERMINAL COMPANY  
et al.,

Defendants.

**Order Relative to Exhibits.**

Counsel for plaintiff having consented, at the request of counsel for defendants in the above-entitled cause, that abstracts and deeds offered in evidence by defendant in the above-entitled cause may be taken from the files in the above-named court, and copies of such abstracts and deeds made therefrom, and when such copies are made that the same may be substituted in the files of said above-entitled court in place of those so taken from the files as aforesaid;

It is hereby ordered that defendants' counsel be, and they are hereby, allowed to take from the files of said above-entitled court abstracts and deeds, and to make copies of the same, and such copies when so made may be substituted in the files of this court in

place of those so taken from the files by counsel for defendants as aforesaid.

Dated this 29 day of June, A. D. 1907.

JAMES WICKERSHAM,

Judge.

We hereby consent to the signing of the foregoing order this 29th day of June, A. D. 1907.

SHACKLEFORD & LYONS,

Attorneys for Plaintiff.

[Endorsed] No. 623-A. Alaska Pac. Ry. & Ter. Co. vs. Copper River & Northwestern Ry. etc. Order. Filed Jun. 29, 1907. C. C. Page, Clerk. By R. E. Robertson, Asst. Deputy.

---

*In the District Court for the District of Alaska,  
Division No. 1.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY (a Corporation),

Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY (a Corporation),  
et al.,

Defendants.

**Order Extending Time to File Bill of Exceptions.**

It is hereby ordered that the plaintiff be and it is hereby granted until the 1st day of September, 1907, within which to prepare, present and file a bill of exceptions herein.

Done in open court this 2d day of July, 1907.

JAMES WICKERSHAM,  
Judge.

[Endorsement]: No. 623-A. In the District Court for the District of Alaska, Div. No. 1. Alaska Pacific Railway & Terminal Co. vs. Copper River Northwestern Railway Co. et al. Order Extending Time to File Bill of Exceptions. Filed Jul. 2, 1907. C. C. Page, Clerk. By A. W. Fox, Deputy.

---

*In the District Court for the Territory of Alaska,  
First Division.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY (a Corporation),

Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY CO (a Corporation), KATALLA  
COMPANY (a Corporation), and M. K.  
ROGERS,

Defendants.



### Oral Opinion.

This is the application of the Alaska Pacific Railway and Terminal Company for an injunction restraining the Copper River and Northwestern Railway Company from crossing its terminal grounds. I have given it as careful consideration as it has been possible under the conditions and time allowed and I have reached a conclusion in the premises. I think it is better to state that conclusion at this time even orally than to hang the matter up for any greater length of time because the conclusion I have reached may necessitate some action on the part of the parties and they ought to have as much time as possible.

This is an application on the part of the Alaska Pacific Railway and Terminal Company to restrain the Copper River and Northwestern Railway Company, a corporation, the Katalla Company, a corporation, and M. K. Rodgers from entering upon its terminal grounds opposite Martin Island, near Katalla, and building across the same portion of a line of railroad.

The complaint alleges that the plaintiff company has acquired rights in those terminal grounds by filing its map under the statute of May 14, 1898, and that it has acquired such a title and right to the property as compels this Court to restrain the defendants from building across it.

The burden, of course, is upon the plaintiff to show the Court such a condition of affairs as would not only justify but compel the Court to do so over the protest of the defendant. The defendants are here protesting vigorously against the issuance of the injunction claiming that if it is issued it will stop the building of their road. That they have a large number of men employed and a vast amount of money expended in building the road and they assert that if this injunction is granted it will be of very great damage to them.

The right of injunction is one of the extraordinary remedies and will be issued only in those cases where it is clearly justifiable under the law and facts in the case. It will not be necessary to read this amended complaint because counsel know what it contains as well as the Court does, and I will only refer to it for the purpose of explanation. The prayer is as follows:

First. That an order be made and entered herein requiring defendants, and each of them, to appear before the Judge of this court, now sitting at Juneau, Alaska, upon a certain day to show cause why they should not be restrained and enjoined from in any wise entering upon or encroaching upon the said terminal tract No. 1-B and right of way for 100 feet on each side of the lines passing through said tract No. 1-B and from in any wise erecting any

structures for railroad purposes, or otherwise, upon said tract and right of way and that they may be enjoined in the meantime until the nearing of the said order to show cause.

Second. That the plaintiff be adjudged the owner of and entitled to the possession of all the land within the exterior boundaries of said tract No. 1-B, also of the right of way for 100 feet on each side of lines of railroads, as indicated on said map and passing through said tract, and that upon the trial of this suit, a decree be made and entered herein perpetually enjoining the defendants, and each of them, their agents, servants and employees and all persons working under them from interfering with the exclusive right and enjoyment of the plaintiff herein to the possession of the land included within the exterior boundaries of the said tract No. 1-B and said right of way for 100 feet on each side of the lines of railroad passing through said tract, and for such other and further relief as to the Court may seem meet and proper.

Counsel for plaintiff confine themselves, by the allegations of the complaint, to the ground within the exterior boundaries of the company's terminal tract No. 1-B and they also include within the prayer an application to prevent the defendants from crossing the line of their right of way in so far only as it is included within the limits of terminal Tract No. 1-B,

It seems to be the law that the Court will restrain a railway company from entering in upon private property and damaging it, by building railroads upon it, or trespass of that nature, until it shall have a right to do so under the law. I think that in a proper case, where it is shown that a railroad company is entering upon the private property of a citizen without having acquired the right to do so by law, by the exercise of the law of eminent domain, it may become the Court's duty to issue an injunction or temporary restraining order to give the parties an opportunity to determine their right, but that rule applies only in cases where there is a threat to cross private property property to which the plaintiff has the title. In this case it is not shown that the plaintiff has any title or any further or greater right to the property than the defendant and the Court will be very slow to grant an injunction in a case of this kind.

The same principle involved in this case was before this Court in the case of *Steel v. The Tanana Mines Railway Co.* and it was there held: "It is not shown that the railroad was being constructed across the slough, or that the ground which it crosses is mineral in character. There is a fair dispute as to the ownership of the ground at the point where the railroad crosses the slough. The defendant has a deed from both homesteaders for the opposite banks

at that point, and probably, under the statute, to the thread of the stream. There is no evidence that the crossing at that point constitutes any damage whatever to plaintiff's property; his title is doubtful, and the rule in all such cases is that an injunction shall not issue until the title is established. The general rule is that an injunction will not issue to prevent a railroad company from taking possession of a right of way and constructing its road over private property without first making payment to the owner for the property taken. This case, however, is within the exception to the general rule: First. Both litigants claim title to the ground in question, and the plaintiff's title is doubtful. High on Injunctions, sections 629, 651, 676, 698, 705, 728, 732. Second. The land is not shown to be mineral in character, nor is any damage shown to have resulted to the plaintiff by the construction of the bridge across the nonnavigable slough. The application for an injunction in that case was denied, on the ground that plaintiff's title was doubtful and he did not show such a title as would justify a court in saying that he had title—nor had private property which should be protected in that way. The Circuit Court of Appeals, Ninth Circuit, affirmed the case so I take it as settled in this district.

I applied the same rule in the case of *McFarland vs. The Alaska Perseverance Mining Company* and held in that case that the plaintiff's title to the prop-

erty in controversy was doubtful—that it was not shown that any appreciable damage was being done thereto, and it further appearing that in that case from the evidence that if an injunction was issued a very much greater damage would be done to the defendant than to the plaintiff by refusing it.

In the case at bar there are oil locations and placer locations admittedly covering the ground in controversy. These are claims made prior to the time when the plaintiff in this case claims to have acquired any right to this property. Whether these oil locations are good or not the Court is not permitted in this case to determine. I am constrained to follow the rule laid down in the case of ————— v. Great Eagle Oil Co., and say that in that class of cases whether or not they are valid is a question for the Department of the Interior to decide and not for this Court. It is true undoubtedly under the law that when a citizen of the United States has gone upon the public domain, has marked the boundaries of a tract of land not exceeding twenty acres in extent so that the boundaries thereof can be readily traced, and has under the statute of Alaska, within the time limited by law, filed his notice of location for record with the recorder and has made a discovery of mineral—coal, oil or gold, that that portion of the land so embraced within his mineral claims is segregated from the public domain. It is no longer a part of

the public domain; it is private property. The title is perfect, the government is his trustee, and when he has finally completed his title and secured the patent the patent will relate back to the initiation of his rights.

Now if that principle is applied to this case and these mining claims it is clear to the Court that the plaintiff has no such title to that property as would justify the Court in saying that it was beyond doubt or dispute their property, and the Court is unable to do so.

There is a very serious question involved in this case under the 3d section of the act providing for railroad rights of way in the Act of May 14, 1898, 30 Stat. L. 409, in relation to canyons, pass or defile, within the meaning of that statute; that the conditions there are such that they must cross this particular tract of ground or they cannot get out of their terminus at Katalla. These two roads are so laid out that the plaintiff's road beginning at Martin Island and running northeast, and the defendant's road beginning at Katalla and running northwest must cross each other to get away from their terminal points. The contour of the ground is shown by the map to be such that the defendant must cross the high ground to the north of plaintiff's terminal at the lowest point which is about ninety feet in height. The plaintiff says in answer thereto that the

defendants may go around their tract by following up the hillside making a climbing roadbed with several curves, and thus climb the hill and go over the top of it. The defendants say that the character of the road which they are building is such that they cannot do that. It is apparent to the Court that they must go over the route they laid out and I am not prepared to say that the Court would be justified in making an order compelling them to climb a hill of that kind instead of going through a cut on a proper grade. The conditions are such that after they go up the hill they would have to go down again and they would have at least two miles of grade or more than one per cent, and it would apparently be a very great damage to them, and I am inclined to think that the statute cited applies to just that kind of a case.

It is not necessary that it be a canyon like the Grand Canyon of the Colorado, or any of the great canyons of the west, to justify the court in applying that statute. Speaking from a railroad standpoint, a continuous rise of a few feet for a long distance may actually stop progress; it may be impossible to build a road over it, although it might not rise into mountainous walls. If to pass such a place it required a cut of such depth or a tunnel of such a length, or grade of such percentage as to be prohibitive, and it could be avoided and overcome by following a level



valley wherein another road claimed exclusive rights, the fair construction of the statute might justify the court in applying it to the case though the usual canyon walls are not existent.

At the point in question the sea is upon one side and the hill on the other; the hill at that point is precipitous probably not more than ninety or a hundred feet high, but high enough to prevent crossing at a proper grade except on the line of the present location, and my judgment is that the defendant is entitled to appeal to that clause of the statute for relief. I agree with counsel for plaintiff that they have no right to cross the private property of another person even under the canyon, pass, and defile clause, and thereby take private property without paying for it, and if that was all there was to this case I would be inclined to grant the injunction until that was done, but in the view which I take of the law it is very doubtful whether the plaintiff has any legal right under the law to this tract No. 1-B.

The statute of 1898 provides that the constructing railway shall prepare a map showing the terminal grounds not exceeding forty acres and file the same under rules and regulation to be approved by the Department of the Interior, and not until it is approved has plaintiff any such possession as will justify the Court in granting an injunction. That matter is now pending before the Department, and it may

be that plaintiff will acquire title to the property, and possibly not. Up to the time that it does it is not in possession in any other sense than that it is there employed in building an approach to Martin Island on piles, over a portion of the right of way as shown on these maps. Plaintiff's title is doubtful in respect to these mineral claims. I do not think that plaintiff has shown that it is in a position at this time to claim undisputed right of possession and title, at least not in any better position than the defendants. In regard to its right of way it may stand in a better shape; the evidence and the maps show that plaintiff has something like 1000 feet of piling erected for track as I remember. The defendant must cross that particular piece of piling-cross plaintiff's right of way, and if the Court should restrain them from doing so the effect would be to cut their work in two parts and be of very great injury.

The argument made by counsel for defendant appeals to me very strongly, that the damage to defendant would be great. It is stated that the defendant has five or six hundred men there at work, both sides seem to be in good faith and vigorously at work building roads. The defendant has a large number of men working and a large amount of supplies on the ground and would be greatly damaged by an order of this Court preventing them from crossing this particular point of right of way at that place, and the

damage would be so out of proportion to the damage done by crossing plaintiff's ground that it does not appeal to me as a matter of right. They have got to cross plaintiff's line somewhere to get out of their terminal and if they go over to the high grade suggested by the plaintiff they would still have to cross plaintiff's road, and the same condition would confront them at that point; the mere fact of their crossing plaintiff's road, established on grade, does not appeal to me as being such an injury as would justify this court in granting the injunction.

In other words, both companies are engaged in building a railroad, and I do not think the Court ought to grant an injunction in this particular case, and I am not inclined to do it. There is a question about plaintiff's right of way. I think it is a serious question. The defendants have equal right with plaintiff to build a railroad across government land. The evidence shows that both sides are building roads without a formal corporate organization fully completed; that neither has reached perfection in its corporate organization. There have been omissions in both titles. The defendants do not show in their evidence that they have any right to build from Katalla under their corporate organization. That announces that they intend to build from Valdez, a distant point, instead of which they are now constructing their road from Katalla. The plaintiffs, however, have no title

which must be accepted as private property in tract No. 1-B. It may never get title and yet the prayer of its complaint asks that it be decreed to be the owner of that tract of public land over which both seek to build. The court has no right to do that. The Department of the Interior may refuse to allow either to have any title and it must be apparent to counsel that the decree of this Court would be invalid as against a different decree made by the Department of the Interior. I am not satisfied with the evidence and do not think it will justify the Court in issuing an injunction against the defendants so as to stop their work; to do so would cut their work in two in the middle and would stop it entirely for this season.

I am persuaded from all the evidence in the case that plaintiff is not badly injured. Plaintiff's map of its terminal ground, with switches, buildings, and roundhouses and yards looks well on paper, but it does not exist as a fact. The principle laid down in the Spokane case applies to this case. The plaintiffs may cross defendants' road and will then enjoy a large area of ground on the public lands, with ample natural facilities for terminal purposes, and that would enable both roads to be built, it would not stop the progress of either, and it would not do damage to anybody, at least not so great as the action of the

Court in granting an injunction. Injunction denied.  
June 11, 1907.

[Endorsed]: Alaska Pac. Railway & Terminal  
Co. Plaintiff, vs. The Copper River & Northwestern  
Railway Co. et al., Defendants. Oral Opinion.  
Filed Jul. 5, 1907. C. C. Page, Clerk.

---

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 623—A.

ALASKA PACIFIC RAILWAY AND TERMI-  
NAL COMPANY,

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY, et al.,

Defendants.

**Minute Entry of Hearing.**

Now on this day, on the motion to show cause for hearing, the plaintiff being represented by its counsel, Messrs. Shackelford & Lyons, and the defendants by their counsel, W. H. Bogel and John R. Winn, whereupon the following proceedings were had: William H. Hampton was called, sworn and testified on behalf of the plaintiff; whereupon exhibits Nos.

1 and 2 were offered, received and marked in behalf of plaintiff; whereupon plaintiff rested; whereupon M. K. Rogers was called, sworn and testified on behalf of the defendant; whereupon exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12 were offered, received and marked in behalf of the defendant; whereupon defendant rested; whereupon J. W. Dudley by leave of the court first had and obtained was called, sworn, and testified on behalf of the plaintiff; whereupon exhibits Nos. 4, 5, 6, and 7 were offered, received and marked on behalf of the defendant; whereupon W. H. Hampton was called and testified on behalf of plaintiff on rebuttal; whereupon exhibit No. 8 was offered, received and marked on behalf of the defendant; whereupon exhibit 13 was offered, received and marked on behalf of the defendant; whereupon exhibits 9, 10, 11, 12, and 13 and 14 were offered, received and marked on behalf of plaintiff; whereupon the further hearing of this cause was continued until Monday morning at 10 A. M.

Done in open court June 8, 1907.

JAMES WICKERSHAM,

Judge.

(Entered in Civil Journal E, for District Court for the District of Alaska, Division No. 1, Saturday, June 8, 1907, page 224.)

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

No. 623—A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY,

Plaintiff,

vs.

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY, et al.,

Defendants.

**Minute Entry of Hearing.**

Now on this day the further hearing of the application of the plaintiff for an injunction herein was had, the plaintiff being represented by its attorneys Messrs. Shackelford & Lyons, and the defendant being represented by its attorneys W. H. Bogel and John R. Winn; whereupon exhibits 15, 16 and 17 were offered, received and marked in behalf of plaintiff; whereupon argument was had by the attorneys for the respective parties hereto and the matter was duly submitted to the court, which announced that it would withhold its decision until a later day.

Done in open court June 10, 1907.

JAMES WICKERSHAM,

Judge.

(Entered in Civil Journal E, for District Court for District of Alaska, Division No. 1, Monday, June 10, 1907, page 225.)

---

*In the District Court for the District of Alaska,  
Division No. One, at Juneau.*

**Clerk's Certificate to Bill of Exceptions.**

United States of America,  
District of Alaska,—ss.

I, C. C. Page, Clerk of the District Court, for the District of Alaska, Division No. 1, at Juneau, do hereby certify that the foregoing and annexed (137 typewritten pages, numbered 1 to 137, inclusive), constitutes a true and correct copy of the following records and files in the cause of Alaska Pacific Railway and Terminal Company, a corporation, plaintiff, versus The Copper River and Northwestern Railway Company, a corporation, et al., defendants, of record or on file in this office, to wit:

Complaint, filed May 9, 1907.

Motion to show cause, filed May 9, 1907.

Affidavit of S. A. D. Morrison, filed May 9, 1907.

Affidavit of S. A. D. Morrison, filed May 11, 1907.

Summons, issued May 13, 1907.

Telegram to Judge Wickersham, filed May 25, 1907.

Order to show cause, filed June 1, 1907.

Amended complaint, filed June 5, 1907.



Order for hearing, entered in Journal E, page 208,  
as minute.

Affidavit of Charles S. Hubbell, filed June 8, 1907.

Answer filed, filed June 8, 1907.

Reply, filed June 8, 1907.

Affidavit of M. W. Bruner, filed June 8, 1907.

Affidavit of S. A. D. Morrison, filed June 8, 1907.

Affidavit of C. E. Davidson, filed June 8, 1907.

Affidavit of S. A. D. Morrison, filed June 8, 1907.

Affidavit of R. Coulter, filed June 8, 1907.

Affidavit of D. B. Skinner, filed June 8, 1907.

Affidavit of John Krey, filed June 8, 1907.

Affidavit of Clark Davis, filed June 8, 1907.

Affidavit of George T. Barrett, filed June 8, 1907.

Affidavit of Henry R. Harriman, filed June 8, 1907.

Affidavit of John R. Winn, filed June 8, 1907.

Affidavit of F. M. Brown, filed June 8, 1907.

Affidavit of H. R. Gabriel, filed June 8, 1907.

Affidavit of H. A. McClure, filed June 8, 1907.

Affidavit of H. R. Gabriel, filed June 8, 1907.

Agreed statement of facts, filed June 8, 1907.

Affidavit of John Krey, filed June 8, 1907.

Affidavit of Geo. T. Barrett, filed June 8, 1907.

Affidavit of Clark Davis, filed June 8, 1907.

Affidavit of Thos. Dwyer, filed June 8, 1907.

Affidavit of A. M. Keating, et al., filed June 8, 1907.

Affidavit of John R. Winn, filed June 10, 1907.

Order denying injunction, filed June 12, 1907.

Order to make copies of exhibits, filed June 29, 1907.

Order extending time for bill of exceptions, filed July 2, 1907.

Opinion, filed July 5, 1907.

Minute entry of hearing on motion to show cause, Journal E, page 224.

Minute entry of further hearing on order to show cause, Journal E, page 225.

I further certify that the said above and foregoing papers constitute a full, true and complete copy, and the whole thereof, of the said cause as the same appears of record and on file in this office save and except the original exhibits offered and filed in the said cause, and also the transcript of testimony taken in the cause of the United States of America plaintiff, versus Thomas C. Caveny, Stephen Pinter, M. Summick, and A. Summick, defendants, before G. C. Britton, United States Commissioner at Katalla, Alaska, the same being attached to the affidavit of F. M. Brown in cause No. 623-A, Alaska Pacific Railway & Terminal Co., a corporation, versus The Copper River & Northwestern Railway Co., a corporation, et al., filed June 8, 1907.

In witness whereof I have hereunto set my hand and affixed the seal of the above court at Juneau this fifth day of July, 1907.

[Seal—District Court.]

C. C. PAGE,

Clerk of the District Court for the District of Alaska,  
Division Number One, at Juneau.

*In the District Court for the District of Alaska, Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,  
Defendants.

**Order Settling Record for Appeal.**

Be it remembered, that the above-entitled action came on for hearing on the 8th day of June, A. D. 1907, in open court, upon the motion of the plaintiff above named filed herein on the 9th day of May, 1907, for an injunction against the defendants The Copper River and Northwestern Railway Company, Katalla Company, a corporation, and M. K. Rogers, as prayed for in the plaintiff's bill of complaint and amended bill of complaint herein, and upon the return the order to show cause entered herein on the 13th day of May, 1907, and returned and filed herein on the 1st day of June, 1907, and plaintiff ap-

peared and was represented by its attorneys, Messrs. Shackelford & Lyons, and the defendants herein appeared and was represented by its attorneys, W. H. Bogle and John R. Winn; that said application was based upon the records and files herein, and the foregoing is a full, true and correct transcript of the records, files and proceedings of said court in said cause on file with said court at and during the time of the said application for an injunction, and including also the opinion of this court and the subsequent order of this court denying the application for said injunction, and includes also all of the oral testimony and other evidence before said court upon said hearing, except the exhibits introduced in evidence, a full, true and correct list of which exhibits is attached to the transcript of the evidence herein, and all of which are on file and properly identified, with the clerk of the district court for the district of Alaska, Division No. 1;

And it is ordered that all of the pleadings, affidavits, proceedings and memoranda herein set forth, and also all of said exhibits, be and are hereby made a part of the record in this cause;

And it is further ordered that all of the original exhibits filed with the clerk of the court be annexed to and by him certified with a copy of this transcript of the proceedings to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the

record in this cause, and transmitted to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under proper certificate, and that all said records, proceedings and exhibits be and constitute the record upon appeal herein from the order denying the application of the plaintiff company for a writ of injunction herein.

Now, on this 18th day of July, 1907, the plaintiff appearing by its counsel, Messrs. Shackleford & Lyons, Harold Preston and F. M. Brown, and the defendants appearing by their counsel, Messrs. Bogle, Hardin & Spooner and John R. Winn, it is ordered that the annexed record of the proceedings in said cause, together with the exhibits scheduled in the annexed record and on file with the clerk of the district court for the district of Alaska, Division No. 1, be settled as and constitute the record on appeal herein;

And it is further certified that the same constitute all of the records, files, affidavits, exhibits, evidence and testimony before the said court and considered by the said court upon the hearing of said application for temporary injunction.

JAMES WICKERSHAM,

Judge.

[Endorsed]: No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, a Corporation, Plaintiff, vs. The Copper River & North-

western Railway Company, a Corporation, et al., Defendants. Record on Appeal. Filed July 26, 1907. C. C. Page, Clerk.

---

*In the District Court, District of Alaska, Division  
No. 1, at Juneau.*

ALASKA PACIFIC RAILWAY & TERMINAL  
CO.,

Plaintiff,

vs.

COPPER RIVER & N. W. RY. CO. (a Corporation),  
KATALLA COMPANY (a Corporation), and M. K. RODGERS,

Defendants.

### **Supplemental Complaint.**

Comes now the plaintiff above named and sets up and alleges the following facts which have occurred since the filing of the amended complaint herein and during the pendency of this act:

#### I.

Between the 27th day of June, 1907, and the 5th day of July, 1907, the defendant organized a large force of men, armed them with rifles, built block-houses on the easterly side of terminal tract No. 1-B and placed a number of men with rifles therein and proceeded from that time until the 5th day of July, 1907, in force and with bodily violence to the em-

ployees of the plaintiff, to tear down the structures of the plaintiff on terminal tract 1-B, along the proposed right of way of the defendants of the Copper River & N. W. Ry. Co. across the right of way of the plaintiff and said terminal tract No. 1-B, and did against the resistance of the employees of the plaintiff and with violence and threats construct along said proposed right of way a railroad line between the points indicated upon the map annexed to the original complaint herein, and referred to in the original complaint herein as points P-P, and have since by means of threats and force and violence maintained, and are continuing to maintain across the said right of way of the plaintiff company and terminal tract 1-B the said railroad line.

The plaintiffs are informed and believe and allege the fact to be that said entry and construction of the said line of railway was and is constructed and maintained contrary to law and contrary to equity and good conscience and with the fraudulent intent and purpose of defeating any order, simply reversing the order denying the injunction herein entered on the 12th of June and with the further fraudulent purpose and intention of claiming a right of way across said terminal tract 1-B so acquired by force during the pendency in the U. S. Land Office of proceedings looking to the further approval by the Secretary of the Interior of the official plat of terminal tract 1-B.

Wherefore, the plaintiff prays as originally prayed in the complaint herein, and in the amended complaint, and further prays that an injunction be entered herein pendente lite, requiring the defendants and each of them to remove from the right of way of the plaintiff and said terminal tract 1-B the said structures so unlawfully erected and erected by force, and place the said right of way and terminal tract in the same condition as existed thereon at the time of the commencement of this action.

HAROLD PRESTON,  
SHACKLEFORD & LYONS and  
F. M. BROWN,

Attorneys for Plaintiff.

United States of America,  
District of Alaska—ss.

I, S. A. D. Morrison, being first duly sworn on oath, depose and saith, that I am one of the officers of the plaintiff named in the foregoing act, to wit, vice-president and general manager, that I have read the foregoing supplementary complaint and know the contents thereof, and the same is true, as I verily believe.

S. A. D. MORRISON.



Subscribed and sworn to before me this 22d day of July.

[Seal]

W. M. WILLIAMS,  
Notary Public.

Due service of a copy of the within is admitted this 26th day of July, 1907.

WINN & BURTON,  
Attorneys for Defendants.

[Endorsed]: Original. No. 623-A. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Ry. & Terminal Co., plaintiffs, vs. Copper River & Northwestern Ry. Co. et al., Defendants. Supplemental Complaint. Filed July 26, 1907. C. C. Page, Clerk. Harold Preston, Shackleford & Lyons and F. M. Brown, Attorneys for Plaintiff. Office: Juneau, Alaska.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY ( a Corporation),  
Plaintiff and Appellant,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY ( a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,

Defendants and Appellees.

**Petition for Appeal.**

Comes now the above-named plaintiff and appellant, Alaska Pacific Railway and Terminal Company, a corporation, and conceiving itself to be aggrieved by that certain interlocutory order made and entered in the above-entitled cause, in the above-entitled court, on the 12th day of June, 1907, wherein and whereby it was ordered and decreed that the application of the plaintiff above named for an injunction, pendente lite, enjoining the defendants, and each of them, from in anywise entering upon or approaching upon a certain terminal tract described in the plaintiff's complaint herein, known as terminal tract No. 1-B, or the right of way for 100 feet on each side of

lines passing through said terminal tract No. 1-B, and from in anywise erecting any structure for railroad purposes or otherwise upon said tract or the right of way of the plaintiff company, was denied, hereby petition said court for an order allowing said plaintiff and appellant to prosecute an appeal from said interlocutory order denying said injunction, pendente lite, to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and that an order be made fixing the amount of security which said plaintiff and appellant shall give upon said appeal, and that a transcript of the record, proceedings and papers upon which said order was made and said application for an injunction was denied, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated July 18th, 1907.

HAROLD PRESTON,  
SHACKLEFORD & LYONS and  
F. M. BROWN,

Attorneys for Plaintiff and Appellant.

The foregoing petition for appeal is granted, and the claim of appeal therein made is allowed.

Dated July 25, 1907.

JAMES WICKERSHAM,  
District Judge for the District of Alaska.

[Endorsed]: No.—. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff and Appellant, vs. The Copper River & Northwestern Railway Co., et al., Defendants and Appellees. Petition for Appeal. Filed Aug. 2, 1907. C. C. Page, Clerk. Filed in the District Court, District of Alaska, Third Division. July 25, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Shackelford & Lyons, Harold Preston and F. M. Brown, Attorneys for Plaintiff and Appellant.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TER-  
MINAL COMPANY (a Corporation),  
Plaintiff and Appellants,

vs.

THE COPPER RIVER AND NORTHWESTERN  
RAILWAY COMPANY ( a Corporation),  
KATALLA COMPANY (a Corporation),  
and M. K. ROGERS,  
Defendants and Appellees,

### **Assignment of Errors.**

The plaintiff and appellant above named files the following assignment of errors, upon which it relies and will rely upon its appeal from the interlocutory order and decree made by this Honorable Court on the 12th day of June, 1907, refusing to grant and denying an injunction, pendente lite, against the defendants, and each of them, in said cause, and the plaintiff and appellant assigns as errors in this appeal the following, viz.:

#### **I.**

That the Court erred in refusing the interlocutory order and in denying the injunction, pendente lite, against the defendants, and each of them, in this cause.

#### **II.**

That the Court erred in admitting in evidence, over the objections of the plaintiff, that certain map, known and designated as Defendants' Exhibit No. 1.

#### **III.**

That the Court erred in admitting in evidence in said cause over the objections of the plaintiff, that certain map known and designated as Defendants' Exhibit No. 2.

#### **IV.**

That the Court erred in permitting the defendants' witness, M. K. Rogers, over the objection of plaintiff, to testify that he ran the preliminary survey for the

defendant, The Copper River and Northwestern Railway Company, in the vicinity of terminal tract No. 1-B in the month of June and the first part of July, and the Court erred in refusing to grant the motion of the plaintiff to strike said testimony.

#### V.

That the Court erred in permitting the defendants' witness, M. K. Rogers, to testify, over the objection of the plaintiff, orally as to the contents of the records in the office of the recorder at Katalla, Alaska, and in permitting said witness to testify, over plaintiff's objection, that the Alaska Coal and Petroleum Company, of which Clark Davis was the manager, was represented to be the owner of a portion of the ground in controversy.

#### VI.

That the Court erred in permitting the defendants' witness, M. K. Rogers, to testify, over the objection of the plaintiff, that the said Alaska Coal and Petroleum Company was in possession of and owned certain oil claims in the vicinity of the property in controversy, as oil or mineral locations.

#### VII.

That the Court erred in permitting the defendants' witness, M. K. Rogers, to testify, over the objection of the plaintiff, that the geological conditions in the neighborhood of Katalla were the same as in Pennsylvania, and that oil lies under the coal formation

there in Pennsylvania, and also there in the vicinity of Katalla and the tract of land in controversy.

VIII.

That the Court erred in refusing to strike all of the testimony of the witness, M. K. Rogers, in which he stated that he would not consider Lake Charlotte Pass a good route to the interior.

IX.

That the Court erred in admitting, over the objection of the plaintiff, a certified copy of location notices and affidavits of labor or assessment work covering the Standard Oil and Oil King mining claims.

X.

That the Court erred, in admitting, over the objection of the plaintiff, location notice of W. A. Abernathy and others of Standard Oil and Oil King lode mining claims, together with powers of attorney and affidavits of labor for the years 1904 and 1905, being respectively Defendants' Exhibits No. 9 and 10.

XI.

That the Court erred in admitting in evidence deed from M. W. Bruner to the Alaska Petroleum and Coal Company, over the objection of the plaintiff, being Defendants' Exhibit No. 11.

XII.

That the Court erred in admitting in evidence the

affidavit of John Krey, over the objection of the plaintiff.

#### XIII.

That the Court erred in admitting in evidence the affidavit of John Krey, over the objection of the plaintiff.

#### XIV.

That the Court erred in refusing the plaintiff's motion to strike statements in the said affidavit of Clark Davis referring to the location, mineral character and performance of assessment work upon Oil King and Standard Oil mining claims.

#### XV.

That the Court erred in admitting in evidence, over the objection of the plaintiff, the affidavit of Henry R. Harriman. The Court further erred in refusing plaintiff's motion to strike the same.

#### XVI.

That the Court erred in admitting in evidence the affidavit of H. R. Gabriel over the objection of the plaintiff.

#### XVII.

That the Court erred in admitting in evidence the affidavit of John Price over the objection of the plaintiff.

#### XVIII.

That the Court erred in admitting in evidence



the affidavit of R. Holt over the objection of the plaintiff.

XIX.

That the Court erred in admitting in evidence the affidavit of Charles S. Hubbell over the objection of the plaintiff.

XX.

That the Court erred in admitting in evidence the affidavit of D. B. Skinner over the objection of the plaintiff.

XXI.

That the Court erred in permitting to be read in evidence the third paragraph of the agreed statement of facts, over the objection of the plaintiff, which said third paragraph referred to the return of the plaintiff's map of definite location for the first twenty miles by the Commissioner of the General Land Office to the plaintiff for clerical correction.

XXII.

That the Court erred in admitting in evidence exhibit "A," referred to in the third paragraph of the agreed statement of facts, over the objection of the plaintiff, the same being a letter from R. A. Ballinger, Commissioner, to the Register and Receiver of the United States Land Office, Juneau, Alaska, returning said map of definite location for a clerical correction.

## XXIII.

That the Court erred in admitting in evidence paragraph four of the agreed statement of facts, over the objection of the plaintiff.

## XXIV.

That the Court erred in admitting in evidence, over the objection of the plaintiff, a telegram from Horace F. Clark to Winn & Burton, Juneau, Alaska, dated June 8th, 1907, and which telegram stated that the maps filed on March 5th, first twenty-nine miles of Copper River and Northwestern Railway, were received by the Commissioner on the 7th of June.

## XXV.

That the Court erred in admitting in evidence, over the objection of the plaintiff, and in overruling the objection of the plaintiff thereto, the sixth paragraph of the agreed statement of facts, containing that certain telegram purporting to be signed by R. A. Ballinger, Commissioner, reading as follows: "Plat terminal sites 1-A and 1-B Controller Bay, Alaska Pacific Railway & Terminal Company, not approved. Approval March 18 affects road line only. Map preliminary location Copper River & Northwestern accepted April 17. No definite location referred to. R. A. Ballinger, Commissioner."

## XXVI.

That the Court erred in admitting in evidence,

over the objection of the plaintiff, the affidavit of John R. Winn, setting forth telegram of June 2d of the firm of Winn & Burton to the Commissioner of the General Land Office, and the telegraphic reply of the Commissioner of June 3d, quoted in full in the last preceding assignment.

#### XXVII.

That the Court erred in admitting in evidence, over the objection of the plaintiff, that certain uncertified copy of plat of Terminal Tracts 1-B and 1-A, known and designated as Defendants' Exhibit No. 13, and erred in refusing to strike the same upon the motion of the plaintiff.

#### XXVIII.

That the Court erred in refusing to grant said injunction pendente lite and the plaintiff's application therefor, and, in connection therewith, in permitting the defendants to defend against said application and in holding that the defendants could defend against said application, while it appeared affirmatively in evidence that the charter and articles of incorporation of the Copper River and Northwestern Railway Company permitted and provided only for the building of a road from a point at or near Valdez, in the district of Alaska, to a point at or near Eagle City, in the district of Alaska, and while it appeared affirmatively to the Court from the uncontradicted evi-

dence in the cause that the said The Copper River and Northwestern Railway Company had abandoned its terminus at Valdez and was attempting to construct its line of railroad from Katalla, a point far distant from Valdez, without having altered its articles of incorporation changing its Pacific Ocean terminus as required by law.

### XXIX.

That the Court erred in deciding and holding that the defendant The Copper River and Northwestern Railway Company could enter upon the right of way and within 100 feet on each side of plaintiff's main line of survey as shown by its approved map of definite location, without any previous proceedings in court for the condemnation of a crossing of the plaintiff's right of way, or for a judicial determination of where said crossing should be.

### XXX.

That the Court erred in holding that the defendants could enter upon and cross Terminal Tract No. 1-B, described in the plaintiff's complaint, while the plaintiffs were in possession of the same, without previous proceedings for condemnation of a right of way across the same, and without having first obtained a judicial determination as to the necessity of the said crossing.

XXXI.

That the Court erred in holding that the defendants could justify their forcible encroachment upon the ground in controversy, being Terminal Tract No. 1-B, and the right of way in the vicinity thereof, under the rights pretended to have been acquired in the Oil King and Standard Oil placer locations, while the plaintiff was in the actual, uninterrupted and peaceable possession of the tract of land in controversy, including the said right of way in the vicinity thereof.

XXXII.

That the Court erred in holding that the ground between the shores of the Pacific Ocean and the northerly boundary of Terminal Tract No. 1-B constituted a canyon, pass or defile, in a railroad or other physical sense.

XXXIII.

That the Court erred in holding that the approval of the plaintiff's definite survey for the first twenty miles did not constitute an approval of the whole right of way, together with the Terminal Tract No. 1-B, on the said definite survey set forth and indicated.

XXXIV.

That the Court erred in holding that the possible loss and damage to the defendants was a material consideration in denying the said injunction, while

the plaintiff was in the actual, peaceable possession of the property in controversy, and the defendants had taken no steps to procure an adjudication of the right to encroach thereon, but were threatening to engage in a forcible violation of plaintiff's possession and rights in and to the property in controversy.

## XXXV.

That the Court erred in holding and ruling that the plaintiff had confined itself to the ground within the exterior boundaries of Terminal Tract No. 1-B, when as a matter of fact the plaintiff has also sought an injunction from an encroachment upon the right of way for 100 feet on each side of the main line of road, as indicated upon its approved definite survey.

## XXXVI.

That the Court erred in holding and ruling that the burden was on the plaintiff to show such a condition of affairs as would not only justify, but "compel," the Court to grant the injunction sought for.

HAROLD PRESTON,

SHACKLEFORD & LYONS, and

F. M. BROWN,

Attorneys for Plaintiff and Appellant.

[Endorsed]: No. ——. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff and Appellant, vs. The Copper River & North-

western Railway Co. et al., Defendants and Appellees. Assignment of Errors. Filed Aug. 2, 1907. C. C. Page, Clerk. Filed in the District Court, District of Alaska, Third Division, Jul. 25, 1907. E. J. Stier, By S. A. Crandall. Harold Preston, Shackelford & Lyons and F. M. Brown, Attorneys for Plaintiff and Appellant.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. ———.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff and Appellant,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation), KATALLA COMPANY (a Corporation), and M. K. ROGERS,

Defendants and Appellees.

**Order Allowing Appeal and Fixing Amount of Bond.**

The plaintiff having this day filed its petition for appeal from that certain order herein made and entered on the 12th day of June, 1907, wherein and whereby the application of plaintiff above named for an injunction pendente lite was refused and denied,

to the United States Circuit Court of Appeals in and for the Ninth Judicial Circuit, together with an assignment of errors within due time, and also praying that an order be made fixing the amount of security which the plaintiff should give and furnish upon said writ of error for the cost of said appeal,

It is now therefore ordered:

1st. That the petition for appeal be and the same is hereby granted, and the claim of appeal therein made be and the same is hereby allowed.

2d. That citation shall issue upon the said plaintiff lodging with the undersigned Judge of this court a good and sufficient bond in the sum of five hundred dollars (\$500.00), to be filed upon approval by the undersigned Judge with the clerk of this court of the date of said approval, to the effect that if the said plaintiff and appellant shall prosecute said appeal to effect, and shall answer all damages and costs that may be awarded said plaintiff and appellant if it fails to make its appeal good, then said obligation to be void, else to remain in full force and virtue.

Dated this 25 day of July, 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: No. —. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff and Appellant, vs. The Copper River & North-



western Railway Co. et al., Defendants and Appellees. Order Allowing Appeal and Fixing Amount of Bond. Filed Aug. 2, 1907. C. C. Page, Clerk. Filed in the District Court, District of Alaska, Third Division, Jul. 25, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Shackelford & Lyons, Harold Preston and F. M. Brown, Attorneys for Plaintiff.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff and Appellant,

vs.

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation), KATALLA COMPANY (a Corporation), and M. K. ROGERS,

Defendants and Appellees.

**Bond on Appeal.**

Know all men by these presents: That we, Alaska Pacific Railway and Terminal Company, a corporation, plaintiff and appellant, as principal, and A. L. Levy and E. B. Wheat, as sureties, are held and

firmly bound unto The Copper River and Northwestern Railway Company, a corporation, Katalla Company, a corporation, and M. K. Rogers, jointly and severally, in the just sum of five hundred dollars (\$500.00), to be paid to said The Copper River and Northwestern Railway Company, a corporation, Katalla Company, a corporation, and M. K. Rogers, their attorneys, executors, administrators, successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 25th day of July, 1907.

Whereas, lately, at the session of the District Court for the District of Alaska, Division No. 1, in a suit pending in said court between the said Alaska Pacific Railway and Terminal Company, plaintiff and appellant, and the said The Copper River and Northwestern Railway Company, a corporation, Katalla Company, a corporation, and M. K. Rogers, defendants and appellees, an order and decree was rendered against the said plaintiff on the 12th day of June, 1907, wherein and whereby it was ordered and decreed that the application of the said plaintiff and appellant for an injunction, pendente lite, be refused and denied; that said plaintiff and appellant having obtained from said court an order allowing an ap-

peal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the said order and decree, and a citation directed to the said defendants and appellees is about to be issued, citing and admonishing them and each of them to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be holden at San Francisco, California;

Now, the condition of the above obligation is such, that if the said Alaska Pacific Railway and Terminal Company, a corporation, shall prosecute said appeal to effect, and shall answer all damages and costs that may be awarded against it if it fails to make its appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

ALASKA PACIFIC RAILWAY AND  
TERMINAL COMPANY, [Seal]

By S. A. D. MORRISON,  
Its Vice-President.

Attest: WILLIAM WRAY,  
Its Secretary.

A. L. LEVY. [Seal]

E. B. WHEAT. [Seal]

Sufficiency of sureties on foregoing bond approved  
this 25th day of July, 1907.

JAMES WICKERSHAM,  
Judge.



United States of America,  
District of Alaska,—ss.

A. L. Levy and E. B. Wheat, being first duly sworn, each for himself and not one for the other deposes and says: That he is a resident of the District of Alaska, and is not a counselor or attorney, marshal, clerk of any court or other officer of any court; that he is worth the sum of five hundred dollars exclusive of property exempt from execution, and over and above all just debts and liabilities.

A. L. LEVY.

E. B. WHEAT.

Subscribed and sworn to before me this 25<sup>th</sup> day of July, A. D. 1907.

[Seal]

FRED M. BROWN,

Notary Public.

[Endorsed]: No.— In the District Court for the District of Alaska, Division No. 1 at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff and appellant, vs. The Copper River & Northwestern Railway Company, et al., Defendants and Appellees. Appeal Bond. Filed Aug. 2, 1907. C. C. Page, Clerk. Filed in the District Court District of Alaska, Third Division. Jul. 25, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Shack-

Shackelford & Lyons, Harold Preston and F. M. Brown,  
Attorneys for Plaintiff.

---

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

vs

THE COPPER RIVER & NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation), and  
M. K. ROGERS,

Defendants.

**Order Confirming Settlement of Record on Appeal.**

This matter having previously come on for hearing by agreement of counsel on the 18th day of July, 1907, for the settlement of the record on appeal herein, and the plaintiff above-named appearing by one of its attorneys, L. P. Shackelford, and the defendants appearing by one of their attorneys, W. H. Bogle, and the Court having signed the order settling the record for appeal herein, which said order is in the following words and figures, to wit:

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. —

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),

Plaintiff,

vs

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation), and  
M. K. ROGERS,

Defendants.

**Order Settling Record for Appeal.**

Be it remembered, that the above-entitled action came on for hearing on the 8th day of June, A. D. 1907, in open court, upon the motion of the plaintiff above-named filed herein on the 9th day of May, 1907, for an injunction against the defendants The Copper River and Northwestern Railway Company, Katalla Company, a corporation, and M. K. Rogers, as prayed for in the plaintiff's bill of complaint and amended bill of complaint herein, and upon the return of the order to show cause entered herein on the 13th day of May, 1907, and returned and filed herein on the 1st day of June, 1907, and plaintiff appeared

and was represented by its attorneys, Messrs. Shackelford & Lyons, and the defendant herein appeared and was represented by its attorneys W. H. Bogle and John R. Winn; that said application was based upon the records and files herein, and the foregoing is a full, true and correct transcript of the records, files and proceedings of said court in said cause on file with said court at and during the time of the said application for an injunction, and including also the opinion of this Court and the subsequent order of this Court denying the application for said injunction, and includes also all of the oral testimony and other evidence before said court upon said hearing, except the exhibits introduced in evidence, a full, true and correct list of which exhibits is attached to the transcript of the evidence herein, and all of which are on file and proper identified with the clerk of the District Court for the District of Alaska, Division No. 1;

And it is ordered that all of the pleadings, affidavits, proceedings and memoranda herein set forth, and also all of said exhibits, be and are hereby made a part of the record in this cause;

And it is further ordered that all of the original exhibits filed with the clerk of the Court be annexed to and by him certified with a copy of this transcript of the proceedings to the United States Circuit Court of Appeals for the Ninth Circuit, as a part of the rec-



ord in this cause, and transmitted to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit under proper certificate, and that all of said records, proceedings and exhibits be and constitute the record upon appeal herein from the order denying the application of the plaintiff company for a writ of injunction herein:

Now, on this 18th day of July, 1907, the plaintiff appearing by its counsel, Messrs. Shackelford & Lyons, Harold Preston and F. M. Brown, and the defendants appearing by their counsel, Messrs. Bogle, Hardin & Spooner, and John R. Winn, it is ordered that the annexed record of the proceedings in said cause, together with the exhibits scheduled in the annexed record and on file with the clerk of the District Court for the District of Alaska, Division No. 1, be settled as and constitute the record on appeal herein;

And it is further certified that the same constitute all of the records, files, affidavits, exhibits, evidence and testimony before the said court and considered by the said court upon the hearing of said application for temporary injunction.

JAMES WICKERSHAM,

Judge.

And whereas, to avoid any question as to the regularity of the settlement of the record for appeal, and by consent of counsel, this order is now made and

entered at Valdez, within the District of Alaska; and it is

Ordered, that the previous order herein set forth, settling said record for appeal, be and the same is hereby ratified, confirmed, reiterated and adopted by this order, and it is

Ordered that the clerk of the District Court for the District of Alaska, Division No. 1, in all respects follow the provisions of the said order of the 18th day of July, 1907, in certifying said record upon appeal, and the said record so previously adopted shall constitute the record upon appeal herein.

Dated at Valdez, Alaska, July 25, 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: Original. No. — In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, a Corporation, Plaintiff, vs. The Copper River & Northwestern Railway Company, a Corporation, et al., Defendants. Order Confirming Settlement of Record on Appeal. Filed Aug. 2, 1907. C. C. Page, Clerk. Filed in the District Court, District of Alaska, Third Division. Jul. 25, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Shackelford & Lyons, Harold Preston and F. M. Brown, Attorneys for Plaintiff.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),

Plaintiff and Appellant,

vs

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation), and  
M. K. ROGERS,

Defendants and Appellees.

**Order.**

An application for an injunction pendente lite, made by the plaintiff and appellant in the above-entitled action, having been heard before the undersigned, Judge of the Third Judicial Division of Alaska, while presiding at a term of court in Juneau, in the First Judicial Division of Alaska, and the undersigned judge now being in Valdez, in said Third Judicial Division, and there being no judge at present in said First Judicial Division; and an assignment of errors and petition for appeal, having been filed by said plaintiff with the clerk of said court in the Third Judicial Division at Valdez, and a petition for appeal, order allowing appeal and fixing amount of cost bond, and cost bond, having been presented

to and signed and approved by the undersigned at Valdez as aforesaid, now on motion of F. M. Brown one of the attorneys for plaintiff and appellant, it is ordered that said assignment of errors, petition for appeal, order allowing appeal and fixing amount of cost bond and bond on appeal, on the part of said plaintiff and appellant be filed with the clerk of said court at Valdez as aforesaid, and after having been endorsed as filed by said clerk, they be forthwith transmitted by him to and filed with C. C. Page, Esq., clerk of the District Court of the First Judicial Division at Juneau, Alaska, together with this order.

Done at Valdez, Alaska, this 25th day of July, A. D. 1907.

JAMES WICKERSHAM,

Judge.

[Endorsed]: No. ——. In the District Court for the Territory of Alaska, Third Division. Alaska Pacific Ry. & Terminal Company, Plaintiff & Appellant, vs. Copper River & Northwestern Ry. Co. et al., Defendants and Appellees. Order. Filed July 25th, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Harold Preston, Shackelford & Lyons & Fred M. Brown, Attorneys for Plaintiff. Filed Aug. 2, 1907. C. C. Page, Clerk. By \_\_\_\_\_, Deputy.

**Telegram from Judge Wickersham.**

SIGNAL CORPS, UNITED STATES ARMY.

25 TELEGRAM. 4.48

RECEIVED AT

31SI WS X N 22 Paid

Valdez, Alas, July 25, 1907.

C. C. Page, Clerk of Court, Juneau.

Order confirming bill of exceptions and allowing appeal fixing bond and approved bond signed cause 623A. Issue citation forthwith.

JAMES WICKERSHAM, Judge.

4:07 P

[Endorsement]: District Court, Dist. Alaska, Div. No. One. Ala. Pac. Ry. & Ter. Co. vs. The Copper River & Northw. Ry. Co., a Corp., et al. Telegram. Filed Jul. 26, 1907. C. C. Page, Clerk.

*In the District Court for the District of Alaska,  
Division No. 1, at Juneau.*

No. 623-A.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),  
Plaintiff,

VS

COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation), KATALLA COMPANY (a Corporation), and M. K. ROGERS,

Defendants.

**Certificate of Clerk to Transcript of Record.**

United States of America,  
District of Alaska,—ss.

I, C. C. Page, Clerk of the District Court for the District of Alaska, Division Number One, hereby certify that the foregoing and hereto annexed, 290 pages of typewritten matter, numbered from one to 290, inclusive, constitutes a full, true and correct copy of the record, and the whole thereof, as per plaintiff's and appellant's praecipe on file herein and made a part hereof wherein the Alaska Pacific Railway and Terminal Company is plaintiff, and the Copper

River and Northwestern Railway Company, Katalla Company, and M. K. Rogers are defendants, No. 623-A, as the same appears of record and on file in my office, and that the said record is by virtue of the order of appeal and citation issued in this cause and the return thereof in accordance therewith.

I do further certify that annexed to said record and made a part hereof are Plaintiff's Exhibits Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21 and Defendant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13; and that the said above-numbered exhibits constitute all of the exhibits offered in the said cause; said exhibits, both of plaintiff and of defendants, being made a part hereof in accordance with an order of this Court dated the 18th day of July, 1907.

And I do further certify that this transcript was prepared by me in my office, and the cost of preparation, examination, and certificate, amounting to one hundred thirty-two dollars and ninety-five cents (\$132.95), was paid to me by counsel for plaintiff and appellant.

In witness whereof I have hereunto set my hand and seal of this Court this third day of August, 1907.

[Seal]

C. C. PAGE,

Clerk of the District Court for the District of Alaska, Division No. One.

*In the United States Circuit Court of Appeals for the Ninth Circuit, on Appeal from the District Court, of the District of Alaska, Division No. 1, at Juneau.*

No. —.

ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY (a Corporation),

Plaintiff and Appellant,

vs

THE COPPER RIVER AND NORTHWESTERN RAILWAY COMPANY (a Corporation),  
KATALLA COMPANY (a Corporation), and  
M. K. ROGERS,

Defendants and Appellees.

**Citation (Original).**

United States of America,  
District of Alaska,—ss.

The President of the United States to the Copper River & Northwestern Railway Company, a Corporation, Katalla Company, a Corporation, and M. K. Rogers, and to Messrs. John R. Winn, W. H. Bogle, and Bogle, Hardin & Spooner, Attorneys for each of Said Parties, Greeting:



You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals, for the Ninth Circuit, to be held at the city of San Francisco, in the State of California, within thirty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the District Court for the District of Alaska, Division No. 1, wherein the appellant and plaintiff above-named, Alaska Pacific Railway and Terminal Company, a corporation, is appellant, and you are the appellees, to show cause, if any there be, why judgment in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable MELVILLE W. FULLER,  
Chief Justice of the Supreme Court of the United States of America, this 25 day of July, 1907.

JAMES WICKERSHAM,  
District Judge for the District Court for the District of Alaska.

[Seal]                      Attest:      C. C. PAGE,  
Clerk of the District Court for the District of Alaska, Division No. 1.

United States of America,  
District of Alaska,—ss.

Service of the above and foregoing citation is hereby admitted and accepted this 29th day of July, 1907.

WINN & BURTON,  
Attorneys for Defendants.

[Endorsed]: No. ——. In the District Court for the District of Alaska, Division No. 1, at Juneau. Alaska Pacific Railway & Terminal Company, Plaintiff and Appellant, vs. The Copper River & Northwestern Railway Company, et al., Defendants and Appellees. Original Citation. Filed Aug. 2, 1907. C. C. Page, Clerk. By ———, Deputy. Filed in the District Court, District of Alaska, Third Division. Jul. 25, 1907. E. J. Stier, Clerk. By S. A. Crandall, Deputy. Shackelford & Lyons, Harold Preston and F. M. Brown, Attorneys for Plaintiff and Appellant.

---

**Plaintiff's Exhibit No. 6.**

Jun. 8, 1907. Pff. Exhibit No. 6. Cause No. 623-A.

A. W. Fox.)

“F” 156 D 1906-46569 S. S. M.

W. W. K.

DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C., April 28, 1906.

Register & Receiver, Juneau, Alaska.

Sir: By letter of March 6, 1906, you transmitted map and field notes in duplicate filed by the Alaska Pacific Railway and Terminal Company as an application under Secs. 2 to 9, inclusive, of the Act of May 14, 1898 (30 Stat. 409), showing the preliminary location of its line of road from a point on Whale Island

northeasterly 14.31 miles to Bering Lake. Also plat and field notes in duplicate showing the definite location of the two tracts of land selected for terminal grounds. Tract No. 1-A showing the location of 19.82 acres on Whale Island, and Tract No. 1-B showing the location of 39.54 acres located on the main-land north of Whale Island.

The application has been examined with the following results:

Terminal stations 2 plus 00, 23 plus 50 and 648 plus 70 should be shown on the map, and described in the field notes and in the forms on the map as being connected by reference to course and distance with a permanent monument or other definite mark, as required by paragraph 12, Circular of January 13, 1904. The termini connections should not be made across a body of water.

The right of way of that portion of the line of road which crosses tide lands between Whale Island and the main-land, also that portion crossing Bering Lake is not applied for by the Company in this application, and these portions of the line of road should be shown on the map in ink of a different color.

This map is designated as being a map of preliminary survey and an examination of the survey and field notes confirms this statement, but the President of the Company in his certificate on the map states

that it is a map of definite location. This discrepancy between the map and field notes and the certificate of the President should be corrected. If it is intended as a map of definite location, the survey being by offsets and angles is not acceptable and one showing the curves in the line of survey of the road must be furnished.

Tract No. 1-A of 19.82 acres shown on the map covers nearly the entire area of Whale Island located in Controller Bay. One of the termini of the road is to be located on this island and the Company is applying for the right of way for this tract for terminal purposes. The line of survey of this tract follows very closely the high water mark line of the greater part of the Island, and the shore line or water front of nearly the entire Island, except a small part of the north end and at one or two other points, A length of shore line of considerably over 80 rods is applied for by this application. In view of the fact that Sec. 2 of the Act of May 14, 1898, expressly limits the shore line of a terminal or junction ground tract to 80 rods on navigable waters, and the shore line of this tract is considerably more than that distance, and also in view of the further fact that the line of road between the Island and the mainland where Terminal Tract No. 1-B of 39.54 acres is located traverses tide-lands and the Company has failed to show that the Secre-

tary of the Treasury has no objection to the construction and maintenance of the piers necessary for the road over the tide lands as required by Sec. 2 of said Act, you are directed to notify the Company that the application as to Terminal Tract No. 1-A is hereby held for rejection, subject to the usual right of appeal.

There are no objections to granting of the right of way of Terminal Tract No. 1-B, but as it is one of definite location adjacent to a preliminary survey of the line of road no action in regard thereto is necessary until a map of definite location of the line of road has been filed.

The map and field notes in duplicate are herewith returned, which, together with the enclosed copy of this letter, you will forward to the Company who will be allowed a reasonable length of time within which to comply with the requirements made in regard to the same. At the same time you return the map and field notes to the Company you will serve notice on it in regard to the application for terminal grounds as hereinbefore directed, and at the expiration of the time allowed report promptly the action taken, together with evidence of service of notice.

Very Respectfully,

W. A. RICHARDS,

Commissioner.

HMC.

**Plaintiff's Exhibit No. 17.**

(Jun. 10, 1907. Plff. Exhibit No. 17. Cause No. 623-A.—A. W. Fox.)

**BEFORE THE GENERAL LAND OFFICE.**

In the matter of the application of the Alaska Pacific Railway & Terminal Company for right of way for permanent station ground No. 1 B, Juneau, Alaska, land district.

**Protest.**

Comes now the Copper River & Northwestern Railway Company, by its attorney, Horace F. Clark, duly authorized by formal power of attorney, to act for the company before the Land Department, and presents this its protest against the acceptance by the Department of the application of the Alaska Pacific Railway & Terminal Company in and for its station ground, designated as No. 1 B, and for cause shows,—

**I**

That said Company in applying for its terminal station grounds No. 1 B takes in the entire ground from the water front back to the mountains, and thus any action of the Land Department in approving such station grounds will serve to cut off the right of other railroad companies, including the Copper River & Northwestern Railway Company, from extending their rails over the grounds so occupied.

## II

That by the approval of this tract as a station ground the Alaska Pacific Railway & Terminal Company will absolutely shut in and prevent the Copper River & Northwestern Railway Company, or any other company, from building its road from Katalla, or in fact to any point west of the said terminal tract, for the reason, as stated, that said tract extends down to the shore and also extends to the mountains, thus cutting out any other company from participating in the rights accorded by the act of May 14, 1898, unless it should be construed in a formal manner by the Department that such a condition appears to create a state of facts analogous to those provided for in section 3 of said act of May 14, 1898. That is, that such a condition would give analogous to those occurring where one or more railroad companies passed through any canyon, pass or defile, and which provides that any such railroad company shall not prevent another railroad company from the use and occupancy of such canyon, pass or defile for the purposes of its road in common with the road first located or the crossing of other railroads at grade, etc.

## III

That by reason of the conditions presented by the filing of the said terminal maps of the Alaska Pacific Railway & Terminal Company, it will be readily seen

that said company has attempted to monopolize the only land in that neighborhood over which any other company might extend its lines for the purpose of traffic or business in contemplation of the railroad right of way act of May 14, 1898.

#### IV

That the Copper River & Northwestern Railway Company, on March 5, 1907, filed with the local land office at Juneau, Alaska, its maps of definite location of right of way from Katalla to the 29th mile, which maps of definite location disclose that the company's route extends across the said terminal ground No. 1 B of said Alaska Pacific Railway & Terminal Company, and must of necessity extend across such right of way in order that the said Copper River & Northwestern Railway Company may avail itself of the opportunity to build its line from Katalla to the proposed terminus thereof.

#### V

That the preliminary maps of general route of the said Copper River & Northwestern Railway Company, from Katalla to Martin River, which as stated, have been supplemented by the filing, on March 3, 1907, in the Juneau land office, of definite maps of location from Katalla to the 29th mile, disclose that there is an actual conflict between the said Copper River & Northwestern Company and the Alaska Pacific Railway & Terminal Company, in that the right



of way applied for by the Copper River & Northwestern Railway Company crosses said Alaska Pacific Railway & Terminal Company's station grounds No. 1 B, and it is absolutely necessary for the said Copper River & Northwestern Railway Company to so extend its map of definite route in order to build its road as contemplated.

## VI

That the attempt of the said Alaska Pacific Railway & Terminal Company to occupy the entire ground between the water front and the mountains by its terminal tract No. 1 B, so as to exclude from the benefits of the right of way act every other road contemplating building in that vicinity, and particularly the Copper River & Northwestern Railway Company, is evidenced by the fact, as protestant is just informed, that said Alaska Pacific Railway & Terminal Company have begun an action in court having for its object the restraint of the Copper River & Northwestern Railway Company from crossing said terminal tract No. 1 B, notwithstanding the maps of said terminal tract No. 1 B have not yet been approved by the Department.

Wherefore, for causes shown, protestant prays that no action may be taken looking to the approval of said maps of right of way of said Alaska Pacific Railway & Terminal Company, in so far as they involve

said tract No. 1 B, for terminal grounds, until such time as a hearing may be had at which the protestant company may substantiate the charges herein made.

Respectfully submitted,

COPPER RIVER & NORTHWESTERN  
RAILWAY COMPANY,

By (Sgd.) HORACE F. CLARK,  
Its Attorney and Attorney in Fact.

Messrs. BOGLE, HARDIN & SPOONER,  
Messrs. BURDETT, THOMPSON & LAW,  
Of Counsel.

District of Columbia—ss.

John B. Clark, being first duly sworn according to law, deposes and says that he is in the employ of Horace F. Clark, who is the duly authorized attorney and attorney in fact of the Copper River & Northwestern Railway Company, as disclosed by the power of attorney heretofore filed in the Land Department at Washington; that deponent is familiar with the conditions set forth in the foregoing protest, and that said protest is made in good faith for the purpose of preventing the granting of the right of way to the Alaska Pacific Railway & Terminal Company in and to its terminal station grounds No. 1 B, for the reasons stated in said protest.

JOHN B. CLARK,

Subscribed and sworn to before me this — day  
of ———, May, 1907.

\_\_\_\_\_,  
Notary Public.

\_\_\_\_\_  
**Plaintiff's Exhibit No. 20.**

(Jun. 8, 1907. Plff. Exhibit No. 20. Cause No. 623-  
A.—A. D. Fox.)

No 1699

Article No. 17469.

UNITED STATES OF AMERICA.

The State Of Washington.

DEPARTMENT OF STATE.

To All To Whom These Presents Shall Come,

I, Sam H. Nichols, Secretary of State of the State of Washington and Keeper of the Seal thereof, do hereby certify that the annexed copy of the Amended Articles of Incorporation of the Alaska Pacific Railway and Terminal Company has been compared by me with the original copy of said company's amended Articles filed for record in this Department, and that the same is a true copy thereof, and of the whole thereof together with all official endorsements thereon.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the State at the Capital, in the City of Olympia, this 24th day of Feby., A. D. 1906.

[State Seal]

SAM. H. NICHOLS,

Secretary of State.

AMENDED ARTICLES OF INCORPORATION  
of the  
ALASKA PACIFIC RAILWAY AND TERMINAL  
COMPANY.

Know all men by these presents: That we, James Buzzard, J. C. Jeffery and William Wray, all of whom are citizens of the United States and residents of the State of Washington, have this day made and executed Amended Articles of Incorporation of the Alaska Pacific Railway and Terminal Company, and certify as follows:

I.

That the corporate name of said corporation shall be, "Alaska Pacific Railway and Terminal Company."

II.

That the amount of capital stock of said corporation shall be Two Million Dollars (\$2,000,000.00), and the same shall be divided into Twenty Thousand (20,000) shares of the par value of One Hundred Dollars (\$100.00) each.

III.

That the time of the existence of said corporation shall be Fifty (50) years from the date hereof.

IV.

That the number of Trustees of said corporation

shall be Three (3), and the names of those who shall manage the concerns of the company until the 5th day of July, A. D. 1905, are: James Buzzard, J. C. Jeffery and William Wray.

(1)

V.

The name of the city in which the principal place of business of the Company shall be located is, the city of Seattle, King County, State of Washington.

VI.

That the objects for which said corporation is formed are the following, to wit:

First—To purchase or otherwise acquire, hold, improve, lease, let, mortgage, sell, convey and otherwise dispose of lands and all other real and personal property of every kind; to improve lands and to develop the resources of lands; to lay out townsites; to open, improve and grade streets; to fill, reclaim and otherwise improve tide lands in the District of Alaska or elsewhere.

Second—To lay out, construct, furnish and equip a railroad line and railroad from a point on Whale Island or Inner Martin Island in Controller Bay in Latitude 60° 09' North Longitude 144° 34' west, thence in a general Northerly direction along the shore of Controller Bay, up Catalla River and across and along the shore of Bering Lake, up Shepard

Creek, and over and up Copper River to and across the Tanana River, and to the Yukon River to or near Eagle City, a distance of about four hundred and fifty (450) miles, in the District of Alaska; and also to lay out, construct, furnish and equip such branch railroad and railroad lines along the main railroad line as may be deemed necessary; also to maintain and operate the said line of railroad and said branch railroads; also to purchase, consolidate with, lease or otherwise acquire, maintain and operate, on such

(2)

3

terms as may be agreed upon, any other railroads, together with their telegraph lines, equipments and appurtenances, which may connect with the railroads or branches of this company, or which are now constructed, or may hereafter be constructed upon the route or routes of the mainline or lines or branches of the railroad or railroads of this company, or any part thereof, by any other company; and to purchase the property of such other company, real, personal or mixed, and thereafter to own, control, manage and operate such other railroads, with their equipments and appurtenances, and for such purposes to subscribe for and purchase all or any portion of the capital stock or bonds of any company owning or operating any such railroad or telegraph line, and to guarantee or otherwise secure the payment of such

bonds or the interest thereon, or stock or dividend thereof, by pledge or mortgage of the property of this corporation, or any part thereof, or in any other manner that shall be deemed expedient; also to use and employ in the management and operation of said railroad and railroad lines, or any part thereof, any kind of power whatever, whether now known or hereafter to be invented or applied; and to receive compensation, fares and tolls for the transportation of freight, goods and passengers thereon; and to act as a common carrier of freight, goods and passengers, and to construct, build, equip, purchase, lease, own, maintain, manage and operate all such engines, cars, rolling stock, machinery appliances, property and rights as may be necessary and convenient in the carrying out the furtherance of these objects.

Third—To construct, own, equip, maintain, manage and operate stage lines, wagon roads 4 logging roads, plank roads, tramways and all other roads of every kind, and to receive compensation, fares, and tolls, for the transportation of freight, goods and passengers thereon, or other use thereof.

Fourth—To build, construct, lease, charter, own, maintain and operate upon and about the waters of the Pacific Ocean, and upon all the rivers, inlets, and tributaries thereof, and upon all other bodies of water

whatever, inland and foreign, steamboats, ships and vessels of all kinds, and other water crafts, for the transportation of goods, freight and passengers, to act as a common carrier thereon, and to collect and receive fares and tolls for transportation thereon.

Fifth—To purchase, acquire, lease, charter, build, construct, own, maintain and operate, scows and tug boats for towing purposes, and to tow ships, vessels, scows, barges, logs, spars, poles, piles, and lumber, and all other crafts and things whatever, and to receive compensation therefor.

Sixth—To engage in the business of wharfing, dockage and warehousing, and to build wharves, piers, warehouses and docks, and to purchase, lease or let the same, and the rights and privileges thereunto belonging and to build, own or lease all such warehouses, docks and wharves, together with the business incident thereto, and to charge, collect, and to receive for the use of said docks, wharves and warehouses, compensation and tools.

Seventh—To purchase, acquire, build, construct, sell, own, lease, maintain and operate sawmills, planing mills and mills and manufactories of all kinds in which lumber or the manufactures thereof may be sawn, planed, dressed, finished, manufactured or otherwise worked; and to purchase, 5  
lease, acquire, build, own, control, maintain and operate all such engines, machinery, plants, appli-



ances, property and rights as may be necessary and convenient in carrying out and furtherance of these objects.

Eighth—To manufacture, buy and sell lumber of all kinds, including shingles, lath and sash, doors, windows, mouldings and all other articles which are or may be manufactured for wood.

Ninth—To purchase, acquire, own, lease, and sell timber lands and timber standing on lands, and to buy and sell logs, spars, poles, piles, and ties, and all other kinds of timber.

Tenth—To purchase, acquire, lease, own, construct, maintain and operate logging camps, and to saw, cut, haul, procure and get logs, spars, poles, piles, and ties, and all other kinds of timber, and to purchase, lease, acquire, construct, own, control, maintain and operate all such engines, machinery, plants, appliances, tools, property and rights as may be necessary and convenient in the carrying out and furtherance of these objects.

Eleventh—To build, construct, own, lease, let, manage, and operate bridges, stores, storehouses, houses and buildings of every kind.

Twelfth—To construct, purchase, or otherwise acquire, equip, furnish, lease and sell telegraph and telephone lines; to manage and operate the same, to transmit messages and receive tolls and compensation therefor.

Thirteenth—To construct, purchase, or otherwise acquire, lease, own, and operate waterworks, aqueducts, water flumes and canals, for the purpose of slugging water and water power to the public and private corporations and individuals and to receive tolls and compensation therefor. 6

Fourteen—To construct, purchase and otherwise acquire, lease, own, and operate gas works, and electric light and power works for the purpose of generating and producing and supplying gas for fuel and illuminating and other purposes, and for the purpose of generating and producing electric light and power, and to supply cities, towns, public and private corporations, and individuals, with gas, electric light and power, and electricity for any purpose whatever, and to receive tolls and compensation therefor.

Fifteenth—To construct, make, equip, own, purchase, lease, maintain and operate canals, for the passage of ships, vessels, boats and other crafts, and for logs and lumber, and to receive compensation, fares and tolls, for the transportation of freight, goods and passengers thereon or other use thereof; also to construct, equip, own, purchase, lease, maintain and operate water flumes and sluices for the transportation of logs, timber and other kinds of lumber, and any other articles whatever, and to

charge and receive compensation for the use thereof.

Sixteenth—To purchase or otherwise acquire, own, lease, develop and operate mines of coal and mines of gold, silver, copper, iron, lead, tin, and mines of any and every kind of mineral and metal whatever, and stone quarries and quarries of every kind and to buy, sell, market and transport the product of any mine or quarry.

Seventeenth—To construct, purchase, or otherwise acquire, lease, own, maintain and operate smelters, mills, furnaces and all other buildings, machinery and apparatus for producing, reducing, re- 7  
fining, developing and perfecting minerals, metals and the products of mines and quarries.

Eighteenth—To purchase or otherwise acquire, lease, mortgage, sell and otherwise deal in goods, wares and merchandise, and all kinds of personal property, and to carry on a general mercantile business at wholesale and retail.

Nineteenth—To construct, purchase or otherwise acquire, own lease, manage, maintain and operate booming grounds, assorting booms, rafting booms, sheer booms, holding booms and all other booms of every kind for the purpose of collecting, holding, assorting, rafting, or otherwise handling logs, spars, poles, piles and timber and lumbering of every kind, and to receive compensation and tolls for any use

thereof; also to clear, open and dam rivers and streams, whenever authorized and permitted by law, for the purpose of floating logs and all other kind of timber and lumber whatever, and to charge and receive compensation therefor.

Twentieth—To purchase, hold, own, and sell the stocks, bonds and securities of such corporations as may be deemed expedient.

Twenty-first—To appropriate land, real estate, premises and other property for right-of-way for any of the objects herein specified, or for any other corporate purposes in all cases where such right of appropriations shall be conferred on corporations of like character by general laws of the District of Alaska, and to ascertain and make due compensation therefor in such manner as is or shall be prescribed by the laws of the said District of Alaska.

Twenty-second—To issue bonds, to borrow 8 money on bonds, notes and debentures and otherwise, for the general purposes of this corporation, and to aid in and carry out any of the objects herein set forth; and to mortgage all or any part of the property and franchises of this corporation of whatever kind, to secure the payment thereof.

Twenty-third—To do all other acts and things necessary and convenient for accomplishing the objects hereinbefore specified.

In witness whereof, we, the said James Buzzard, J. C. Jeffery and William Wray, have hereunto set our hands and seals, in triplicate hereof, this 23d day of February, A. D. 1906.

JAMES BUZZARD, [Seal]

President.

[Seal] J. C. JEFFERY, [Seal]

Secretary.

WILLIAM WRAY. [Seal]

In presence of:

A. C. DEXTER.

FRANK SCHURER.

State of Washington,  
County of King,—ss.

This is to certify that on this 23d day of February, A. D. 1906, before me, the undersigned, a notary public in and for the State of Washington, duly commissioned and sworn, personally came James Buzzard, J. C. Jeffery and William Wray, to me known to be the individuals described in and who executed the foregoing amended articles of incorporation, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.



constitute a full, true and correct copy, and the whole thereof, of authenticated copy of Amended Articles of Incorporation of the Alaska Pacific Railway and Terminal Company, a foreign corporation, filed in this office under date of June 7, 1907.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Alaska, at Juneau, this 24th day of June, A. D. 1907.

[Seal]

WM. L. DISTIN,  
Secretary of Alaska.

---

**Plaintiff's Exhibit No. 21.**

(Jun. 8, 1907, Plff. Exhibit No. 21. Cause No.

623-A.—A. D. Fox.)

**ARTICLES OF INCORPORATION**

of the

**COPPER RIVER & NORTHWESTERN RAIL-  
WAY COMPANY.**

Know all men by these presents, that we, the undersigned incorporators, do hereby voluntarily associate ourselves together for the purpose of establishing a corporation for the transaction of business, with the objects and purposes hereinafter set forth, under the provisions of and subject to the requirements of an act of the legislature of Nevada, entitled "An Act providing a general corporation law," ap-

proved March 16th, 1903, and we do hereby and to that end make, acknowledge, and file this certificate, and we do hereby certify and set forth:

#### ARTICLE 1.

##### NAME.

The corporation name is "Copper River and Northwestern Railway Company."

#### ARTICLE II.

##### PRINCIPAL OFFICE AND PRINCIPAL PLACE OF BUSINESS.

The principal office of this corporation is located in the County Building on Carson Street, Carson City, Ormsby County, State of Nevada.

The principal place of business of this corporation is located in the City of Seattle, County of King, and State of Washington, where an office of said corporation shall be maintained.

#### ARTICLE III.

##### OBJECTS AND PURPOSES.

The objects and purposes for which this corporation is established are:

a. To build, construct, operate, repair, alter, maintain, and equip, a railway, from some point on tide water at or near Valdez, in the District of Alaska, to a point on the Yukon River at or near the town of Eagle City in the District of Alaska, with the



reserved privilege of continuing the line to the Koyukuk River, to some point to be later designated, with all necessary branches and branch lines, switches, turn-outs, wharves, warehouses, depot buildings, and other structures, appliances, machinery or equipment that may be necessary or required.

b. To exercise the right of eminent domain in the District of Alaska, for the purpose of carrying out any of the objects of this corporation, with full power to commence, maintain, and prosecute, in any of the Courts in the District of Alaska, suits that may be necessary or required for the purpose of obtaining, through the right of eminent domain, or otherwise, grounds for right of way, depot, depots, and other purposes.

c. To erect, construct, buy, charter, or acquire in any other manner, and to operate, maintain, improve, develop, manage, repair, work, control, and superintend, any steamers, schooners, tugs, barges, lighters, machinery, locomotives, wagon trains, pack trains, wagon roads, railroads, tramways, toll roads, wharves, and warehouses.

d. To acquire, own, lease, occupy, use, and improve all real estate and lands that may be necessary or required for the conduct of the business herein provided for, and when no longer of use to sell and dispose of same.

e. To buy, acquire, own, handle, deal in and deal with, any and all kinds of goods, wares, and merchandise, that may be necessary or required in the conduct of the business provided for under these articles.

f. To acquire by grant, purchase, or otherwise, and to use and enjoy any and all franchises, rights and privileges, from public corporations or authorities which may be necessary or desirable or to otherwise dispose of the same.

g. To borrow money upon bonds, notes, mortgages, or other obligations; to issue bonds and debentures, and to mortgage and hypothecate any and all of the property of the corporation to secure the payment of the same.

h. To consolidate, merge, or unite with any other corporation or corporations, as may be deemed proper or necessary in the interests of this corporation.

i. To hold, purchase, or otherwise acquire its own stock, and to sell and dispose of the same; to hold, purchase, or otherwise acquire, to sell, assign, transfer, mortgage, pledge, or otherwise dispose of, shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations, and while the owner thereof to exercise all the rights and privileges of ownership, including the right to vote thereon.

j. To sell, lease, charter, or otherwise dispose of, absolutely or conditionally, or for any limited interest, the whole or any of the property, rights, concession, or privileges of the corporation, for such consideration in cash, shares, or otherwise, as may be deemed best, and to abandon any part of the business of the corporation for the time being, and to carry on any of the objects mentioned in this article to the exclusion of others.

k. To enter into any partnership or into any arrangement for sharing profits, operating, reciprocal concessions, or otherwise, with any person or company, and to remunerate any person or company by fixed salary or specified remuneration, or by a share of profits, present, past or future, or part one way and part the other.

l. To make and carry into effect or determine arrangements with American or foreign shipping companies or railways, proprietors or charterers of steam or other mechanical power, and any other persons or companies.

m. To do all such acts and things as are incidental, conducive, necessary, or permissible to or under the above objects.

n. To have, exercise, possess, use, and enjoy such other rights, privileges, franchises, and powers as may from time to time be deemed by its board of directors profitable, useful or necessary, or incidental

to the powers herein enumerated, or requisite or proper in the conduct of the business of this corporation.

#### ARTICLE IV.

##### CAPITAL STOCK.

The amount of the total authorized capital stock of this corporation is two hundred and fifty thousand dollars (\$250,000) divided into twenty-five hundred shares of the par value of one hundred dollars each, of which capital stock five thousand dollars (\$5,000) has been subscribed and paid in by the undersigned incorporators, at the par value, to wit, one hundred dollars per share.

#### ARTICLE V.

##### STOCKHOLDERS — NAMES, RESIDENCES, AND SHARES OF STOCK.

The names, postoffice addresses, and residences of each of the original subscribers to the capital stock of this corporation, and the amount subscribed by each, are as follows, to wit:

John Rosene, Seattle, Washington,	46 shares	\$4600	Paid
Moritz Thomsen, Seattle, Washington,	1 share	\$100	Paid
J. D. Trenholme, Seattle, Washington,	1 share	\$100	Paid
William T. Perkins, Nome, Alaska,	1 share	\$100	Paid
M. M. Perl, Seattle, Washington,	1 share	\$100	Paid

#### ARTICLE VI.

The duration of this corporation shall be perpetual.

ARTICLE VII.

The members of the governing board of this corporation shall be styled "Directors," and the number shall be five.

ARTICLE VIII.

The capital stock of this corporation shall not be subject to any assessment whatsoever to pay debts of this corporation.

ARTICLE IX.

The stockholders and directors shall hold all meetings at the principal place of business of said corporation, to wit, at Seattle, Washington, at such times and in such manner as the by-laws may provide.

ARTICLE X.

STATE AGENT.

"State Agent and Transfer Syndicate, Inc.," is hereby appointed agent of this corporation, resident in the State of Nevada, in charge of the principal office of said corporation, to act for said corporation as its resident agent, with the duties, powers, and authority required of and given to such agent under the laws of the State of Nevada.

ARTICLE XI.

FIRST MEETING.

The first meeting of this corporation shall be held

at the City of Seattle, State of Washington (the principal place of business of said corporation), on the 22d day of May, 1905, at Room 202 Pioneer Building, at the hour of five o'clock P. M. of said day, for the purpose of electing directors, adopting by-laws, accepting payment of subscription to capital stock, or otherwise organizing and perfecting said corporation, and the undersigned expressly waive notice thereof as provided by law.

In witness whereof we have hereunto set our hands and seals this 16th day of May, 1905.

JOHN ROSENE. [Seal]

M. THOMSEN. [Seal]

J. D. TRENHOLME [Seal]

WM. T. PERKINS. [Seal]

M. M. PERL. [Seal]

Signed, sealed and delivered in presence of:

JOHN P. HARTMAN.

HELEN G. MORRILL.

State of Washington,  
County of King,—ss

On this 16th day of May, 1905, before me, the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared John Rosene, Moritz Thomsen, J. D. Trenholme, William T. Perkins, and M. M. Perl, whose names are subscribed to the annexed and foregoing

instrument as parties thereto, who each acknowledged to me that they, each of them respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Seal] JOHN P. HARTMAN,  
Notary Public in and for the State of Washington,  
Residing at Seattle in said County and State.

State of Nevada,  
County of Ormsby,—ss.

I, H. B. Van Etten, County Clerk of Ormsby County, State of Nevada, and ex-officio Clerk of the District Court, in and for the county of Ormsby, do hereby certify that the foregoing is a full, true and correct copy of the original Articles of Incorporation of the Copper River and Northwestern Railway Company which now remains on file and of record in my office in Carson City, in said county.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Carson City, in said County and State this 19th day of May, A. D. 1905.

[Seal] H. B. VAN ETTEN,  
Clerk.

By \_\_\_\_\_,  
Deputy.

State of Nevada,

Department of State,—ss.

I, W. G. Douglass, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the original certified copy of Articles of Incorporation of the Copper River and Northwestern Railway Company, now on file and of record in this office.

In witness whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 19th day of May, A. D. 1905.

[State Seal]

W. G. DOUGLASS,  
Secretary of State.  
By J. W. Legate,  
Deputy.

[Endorsed]: Articles of Incorporation of the Copper River and Northwestern Railway Company. Filed May 19, 1905. H. B. Van Etten, Clerk. Filed May 19, 1905. W. G. Douglass, Secretary of State. By J. W. Legate, Deputy. Filed in the Office of the Secretary of Alaska, 6 day of June, A. D. 1905. Wm. L. Distin, Secretary of Alaska. Law Offices of John P. Hartman, Burke Building, Seattle, Washington.



CERTIFICATE OF PRESIDENT AND SECRETARY.

State of Washington,  
County of King,—ss.

John Rosene and J. D. Trenholme, each of lawful age, being first duly and severally sworn, on oath, depose and say, each for himself:

First.—That he is a resident and citizen of said State; that they are the President and Secretary respectively of the Copper River and Northwestern Railway Company, a corporation duly formed and existing under and by virtue of the laws of the State of Nevada, with its principal office in Carson City, Nevada, and its principal place of business at Seattle, Washington, and that said Company is now carrying on business in the District of Alaska, having its principal place of business in said District of the City of Valdez.

Second.—That the amount of capital stock of said corporation is two hundred and fifty thousand dollars, divided into shares of one hundred dollars each.

Third.—That the amount of capital stock actually paid, in cash, is five thousand dollars.

Fourth.—That the assets of said corporation consist of five thousand dollars in cash.

Fifth.—That the Company has no existing liabilities.

JOHN ROSENE,  
President.

J. D. TRENHOLME,  
Secretary.

Subscribed and sworn to before me this 25th day of May, 1905.

[Seal]

JOHN P. HARTMAN,  
Notary Public in and for State of Washington, Residing at Seattle.

CERTIFICATE OF DIRECTORS TO REPORT  
OF PRESIDENT AND SECRETARY.

State of Washington,  
County of King,—ss.

We, the undersigned, being a majority of the Board of Directors of the Copper River & Northwestern Railway Company, do hereby certify to the correctness of the foregoing statement of said corporation, made by the President and Secretary thereof.

In testimony whereof we have hereunto set our hands at the City of Seattle in said County, and duly attest the foregoing statement, this 25th day of May, 1905.

JOHN ROSENE.  
J. D. TRENHOLME.  
M. M. PERL.

CERTIFICATE OF SECRETARY.

State of Washington,  
County of King,—ss.

I, J. D. Trenholme, Secretary of the Copper River & Northwestern Railway Company, do hereby certify that John Rosene, Moritz Thomsen, Henry Brantnober, D. H. Jarvis, and J. D. Trenholme, are the regularly elected, qualified and acting directors of said corporation.

That the entire board of directors of said corporation consists of five members.

In witness whereof I have hereunto set my hand and affixed the seal of said corporation at Seattle, Washington, this 25th day of May, 1905.

[Seal]

J. D. TRENHOLME,  
Secretary.

[Endorsed]: Statement of Copper River & Northwestern Railway Company. Filed in the Office of the Secretary of Alaska, 6 day of June, A. D. 1905. Wm. L. Distin, Secretary of Alaska. Law Offices of John P. Hartman, Burke Building, Seattle, Washington.

## CERTIFICATE OF PRESIDENT AND SECRETARY.

State of Washington,  
County of King,—ss.

John Rosene and J. D. Trenholme, each of lawful age, being first duly and severally sworn, on oath depose and say, each for himself:

First.—That he is a resident and citizen of said State; that they are the President and Secretary respectively of the Copper River & Northwestern Railway Company, a corporation, duly formed and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at Seattle, Washington, and that said Company is carrying on business in the District of Alaska, having its principal place of business at the town of Valdez.

Second.—That the amount of the capital stock of said corporation is \$250,000, divided into shares of \$100 each.

Third.—That the amount of capital stock actually paid in is \$250,000, and that the same is paid in in cash.

Fourth.—That the assets of said corporation consist of real estate, railroad material and supplies, of the fair cash value of \$250,000.

Fifth.—That said Company has no existing liabilities.

JOHN ROSENE.

J. D. TRENHOLME.

Subscribed and sworn to before me this 6th day of July, 1906.

[Notarial Seal]

W. J. J. ROBERTS,

Notary Public in and for the State of Washington,

Residing at Seattle.

[Corporate Seal]

CERTIFICATE OF TRUSTEES TO REPORT OF  
PRESIDENT AND SECRETARY.

State of Washington,  
County of King,—ss.

We, the undersigned, being a majority of the Board of Trustees of the Copper River & Northwestern Railway Company, a corporation, do hereby certify that the foregoing statement of said corporation, made by the President and Secretary thereof, is correct.

In testimony whereof we have hereunto set our hands at the City of Seattle, in said County, and duly attest the foregoing statement, this 6th day of July, 1906.

JOHN ROSENE.

J. D. TRENHOLME.

M. M. PERL.

M. THOMSEN.

## CERTIFICATE OF SECRETARY.

State of Washington,  
County of King,—ss.

I, J. D. Trenholme, Secretary of the Copper River & Northwestern Railway Company, do hereby certify that John Rosene, J. D. Trenholme, M. M. Perl, M. Thomsen, are the regularly elected, qualified and acting trustees of said corporation.

That the entire board of trustees of said corporation consists of five members.

In witness whereof I have hereunto set my hand and affixed the seal of said corporation at Seattle, Washington, this 6th day of July, 1906.

[Seal]

J. D. TRENHOLME,

Secretary.

[Endorsed]: Annual Statement of Copper River & Northwestern Ry. Co. Filed in the Office of the Secretary of Alaska, 2 day of August, A. D. 1906.  
Wm. L. Distin, Secretary of Alaska.

United States of America,  
District of Alaska,—ss.

I, William L. Distin, Secretary of the District of Alaska, do hereby certify that the above and foregoing and hereto annexed fourteen pages of typewritten matter, numbered from one to fourteen, both

inclusive, constitute a full, true and correct copy, and the whole thereof, of—

Authenticated copy of Articles of Incorporation of the Copper River and Northwestern Railway Company, a foreign corporation, on file in this office under date of June 6, 1905.

Statement of Copper River and Northwestern Railway Company, a foreign corporation, on file in this office under date of June 6, 1905.

Annual Statement of Copper River and Northwestern Railway Company, a foreign corporation, on file in this office under date of August 2, 1906.

In testimony whereof I have hereunto set my hand and affixed the Great Seal of Alaska, at Juneau, this 24th day of June, A. D. 1907.

[Seal]

WM. L. DISTIN,  
Secretary of Alaska.

---

**Defendants' Exhibit No. 8.**

(Jun. 8, 1907. Deft. Exhibit No. 8. Cause No. 623.—A. W. Fox.)

For and in consideration of the sum of one dollar (\$1.00) to us in hand paid by the Copper River & Northwestern Railway Company, we, the Alaska Petroleum & Coal Company and Copper River Oil & Mining Company, do hereby grant, bargain, sell, and convey unto the Copper River and Northwestern

Railway Company, its successors and assigns, a strip of land one hundred feet in width on each side of the central line of said Railway, as the same is now located by said Copper River & Northwestern Railway Company, or as said location may be revised prior to December 31st, 1907, for its right of way over and across any and all lands, or interests in lands, owned by or held by us in the Kayak Recording District, Alaska.

This instrument is intended to convey the surface rights only, and nothing in this conveyance shall be construed to limit the right of first party, their successors or assigns, to enter upon and occupy any portion of said right of way not occupied or actually used for and by said company for and by such railroad, for the purpose of drilling for oil or gas, and first party, its successors and assigns shall have the right to cross such right of way on grade for wagon roads, tram roads, or railroads, and to cross by tunnel with any of its pipe lines, and reserves further the right to adopt and enforce such precautionary measures as to the location of such right of way and the operation of a railroad thereon, in reference to its oil business, as it shall deem necessary to prevent fire, and provided, further, that no right of way is granted across or through the present platted limits of the townsite of Catalla.

To have and to hold unto the said Copper River and Northwestern Railway Company, its successors



and assigns, forever, subject to the above-named restrictions, and conditions.

In testimony whereof, we have caused this instrument to be executed and our corporate seals hereunto attached this twenty-third day of March, A. D. 1907.

[Corporate Seal Alaska Petroleum and Coal Co.]

ALASKA PETROLEUM AND COAL COMPANY,

[Corporate Seal Copper River Oil and Mining Co.]

By CLARK DAVIS,

Vice-President.

By H. R. HARRIMAN,

Secretary.

COPPER RIVER OIL AND MINING COMPANY,

By T. W. GILLETTE.

By WILLIAM McCASH.

Witnesses:

W. M. FRENCH.

CHAS. D. DAVIS.

State of Washington,  
County of King,—ss.

I, Walter M. French, a Notary Public in and for the State of Washington, do hereby certify that on this 23 day of March, A. D., 1907, Clark Davis and

H. R. Harriman, known to me to be the individuals who, as Vice-President and Secretary respectively, of the Alaska Petroleum and Coal Company, executed the foregoing instrument, and severally acknowledged before me that as such officers of said company, they executed the foregoing instrument for and on behalf of said company, for the uses and purposes therein stated. And the said H. R. Harriman and Clark Davis, being each duly sworn, stated that as such officers of said company, they were duly authorized by said company to execute said instrument for and on behalf of said company.

Given under my hand and official seal at Seattle, Washington, on the day and date first above written.

[L S.]

WALTER M. FRENCH,

Notary Public in and for the State of Washington,  
Residing at Seattle.

State of Washington,  
County of King,—ss.

I, Walter M. French, a Notary Public in and for the State of Washington, do hereby certify that on this 23d day of March, A. D., 1907, T. W. Gillette and William McCush, known to me to be the individuals who, as President and Secretary respectively, of the Copper River Oil and Mining Company, executed the foregoing instrument, and severally acknowledged before me that as such officers of said Com-

pany, they executed, the foregoing instrument for and on behalf of said Company, for the uses and purposes therein stated.

And the said T. W. Gillette and William McCush being each duly sworn, stated that as such officers of said company, they were duly authorized by said company to execute said instrument, for and on behalf of said company.

Given under my hand and official seal at Seattle, Washington, on the day and date first above written.

[L. S.]                      WALTER M. FRENCH,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Compared—O. K.

L. R. GILLETTE.

---

**Defendant's Exhibit No. 9.**

(Deft. Exhibit No. 9.—Cause No. 623-A.—A. W. Fox.)

ABSTRACT OF TITLE

TO

OIL KING OIL CLAIM,

Situate in

KAYAK RECORDING DISTRICT,

DISTRICT OF ALASKA.

Compiled by G. C. Britton, U. S. Commissioner and  
Ex-Officio District Recorder, Katalla, Alaska.

INDEX.

Location Notice..... 1  
Powers of Attorney.....4-5-7-8-9  
Deeds... ..3-6-10-11-13-14-15-16  
Affidavits of Labor.....12-17-18  
Agreements..... 2  
W. A. ABERNATHY et al.,

to

The PUBLIC.

1.

NOTICE OF LOCATION OF OIL LANDS.

Notice of Location of Oil King

Oil Claim.

Dated: Nov. 21, 1901.

Filed: December 17, 1901.

Recorded: In Vol. 2 of Min. Loc. at page 245, Valdez  
Transcript.

District of Alaska,

Valdez Mining District,—ss.

Notice is hereby given that the undersigned having complied with the requirements of Chapter Six of Title Thirty Two of the revised statutes of the United States and the local customs, laws, and reg-

ulations, have located one hundred and sixty acres of placer mining ground, being ground valuable for mineral oil and petroleum, situated in the Valdez Mining District; District of Alaska, described as follows, to wit:

Commencing at corner post No. 1, marked Oil King, thence in a westerly direction 1320 feet to an intermediate post No. 2; thence in a westerly direction 1320 feet to the S. W. corner post No. 3; thence in a northerly direction 1320 feet to an intermediate post No. 4; thence in a northerly direction 1320 feet to the N. W. corner post No. 5; thence in an easterly direction 1320 feet to an intermediate post No. 6; thence in an easterly direction 1320 feet to the N. E. corner post No. 7, thence in a southerly direction 1320 feet to an intermediate post No. 8; thence in a southerly direction 1320 feet to corner post No. 1, the place of beginning. Corner post No. 1 is on the Ocean front opposite the northerly and easterly of the two Martin Islands, and is about twenty feet west of the creek that is west of the Indian graveyard opposite the islands called Martin Islands, and those

islands are about twelve miles north of Big Kayak Island.

The name of this claim is the Oil King.

Oil was discovered November 21st, A. D., 1901.

W. A. ABERNATHY,

THOS. S. WHITE,

WM. CARLESS,

J. M. PETERSON,

JOHN OLDS.

E. E. COY,

F. LIND,

W. S. ABERNATHY,

By W. A. ABERNATHY,

Locators.

Attest: FRED LIND.

The above instrument was filed for record at 9 o'clock A. M., December 17, 1901.

JOHN LYONS,

U. S. Commissioner.

2.

W. A. ABERNATHY, E. E. COY, and FRED  
LIND,

with

EACH OTHER.

AGREEMENT.

Dated: Jan. 17, 1902.

Acknowledged: Jan. 17, 1902, before Notary Public  
with seal.

Filed: July 8, 1902, at 9 o'clock A. M.

Recorded: In Vol. 1, of Deeds, at page 11, of Valdez  
Transcript, Kayak Recording District.

Two Witnesses.

The instrument recites, That whereas, the parties to the instrument have located 29 association oil claims, and that prior to locating the same had discovered on each of said claims petroleum, mineral oil, natural gas and other substances.

The agreement provides that each of the parties shall hold an undivided one-third interest in said 29 oil claims and all claims acquired in the future up to the first day of June, 1902.

(With other provisions)

E. E. COY, [Seal]

W. A. ABERNATHY. [Seal]

FRED LIND. [Seal]

3.

O. E. SAUTER, R. J. MAHONEY, and J. H. MIR-  
ACLE.

to

ALASKA PETROLEUM AND COAL COM-  
PANY, (a Corporation).

Q. C. DEED.

Date: Nov. 18, 1902.

Consideration: \$1.00, and other valuable considerations.

Acknowledged: Nov. 18, 1902, before Notary Public with seal.

Filed for record Feb. 2, 1902, at 9 o'clock A. M.

Recorded: In Vol. I of Deeds, at page 122, Valdez Transcript, Kayak Recording District.

Two Witnesses.

Instrument refers to certain deeds, agreements and contracts which the grantee assumes.

Conveys Standard Oil and Oil King oil claims with other claims.

O. E. SAUTER.      [Seal]

R. J. MAHONEY.    [Seal]

J. H. MIRACLE.     [Seal]

4.

W. S. ABERNATHY

to

W. A. ABERNATHY.

POWER OF ATTORNEY.

Dated: July 5, 1902.

Acknowledged: July 5, 1902, before Notary Public with seal.

Filed: Sept. 8, 1902 at 9 o'clock A. M.



Recorded in Vol. I of Deeds, at page 32, of Valdez Transcript, Kayak Recording District.

Two Witnesses.

This instrument recites:

“By these presents do make, constitute and appoint W. A. Abernathy my true and lawful attorney for me, and in my name, place and stead, giving him full power and authority to sell, transfer and deliver all of my interest in the following described placer oil claims, viz.:

(Names certain claims) “and any or all placer claims now owned by me.”

The instrument also provides full power and authority to do any act or thing required.

W. S. ABERNATHY. [Seal]

5.

WM. CARLESS, G. T. BARRETT, P. R. TEMPLE, T. G. WHITE, and M. DUVAL,

to

W. A. ABERNATHY.

POWER OF ATTORNEY.

Dated: June 27, 1902.

Acknowledged: June 23, 1902, before notary public with seal.

Filed: Nov. 24, 1902, at 12 o'clock M.

Recorded: In Vol. I of Deeds, at page 48, of Valdez transcript, Kayak Recording District.

Two Witnesses.

This instrument recites:

“By these presents do make, constitute and appoint W. A. Abernathy, our true and lawful attorney for us, and in our names and stead, with full power to act for us (with other matters) pertaining to our several or individual interests to certain placer oil claims (with others) at Martin Point, about three miles from Catalla.”

The instrument gives authority to do any and all acts necessary.

WM. CARLESS. [Seal]

G. T. BARRETT. [Seal]

P. R. TEMPLE. [Seal]

T. G. WHITE. [Seal]

M. DUVAL. [Seal]

6.

WM. CARLESS, MIKE DUVAL, M. M. COLQUHOUEN, GEORGE T. BARRETT, THOMAS WHITE, and W. A. ABERNETHY

to

O. E. SAUTER, R. J. MAHONEY and J. H. MIRACLE.

QUITCLAIM DEED.

Dated: Oct. 14, 1902.

Acknowledged: Oct. 14, 1902, before notary public  
with seal.

Filed: Nov. 26, 1902, at 9 o'clock A. M.

Recorded: In Vol. I of Deeds at page 53 of Valdez  
Transcript, Kayak Recording District.

Two witnesses.

Consideration: \$1.00.

This instrument is the ordinary form of quitclaim deed and conveys to the grantee all the estate, title, and interest of the grantors in and to 29 placer oil claims, including Oil King and Standard Oil claims.

WM. CARLESS, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

MIKE DUVAL, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

M. M. COLQUHOUN, [Seal]

GEORGE T. BARRETT, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

THOMAS WHITE, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

W. A. ABERNETHY. [Seal]

7.

FRED LIND

to

E. E. COY.

POWER OF ATTORNEY.

Dated: Jan. 25, 1902.

Acknowledged: Jan. 25, 1902, before notary public  
with seal.

Filed: Dec. 9, 1902, at 9 o'clock A. M.

Recorded: In Vol. I of Deeds at page 88 of Valdez  
Transcript, Kayak Recording District.

Two witnesses.

This instrument contains the usual power to locate mineral claims and to sell the same and any claims now owned by the grantor and to manage lease and control the same.

FRED LIND. [Seal]

8.

JOHN OLDS

to

E. E. COY.

POWER OF ATTORNEY.

Dated: Feb. 3, 1902.

Acknowledged: Feb. 3, 1902, before notary public  
with seal.

Filed: May 4, 1903, at 8 o'clock A. M.

Recorded: In Vol. I of Powers of Attorney, at page  
50 of Kayak Recording District.

Two witnesses.

This instrument empowers the attorney to bargain,  
sell, lease, control, execute deeds and other instru-  
ments for oil and other lands owned by him in Alaska.

JOHN OLDS. [Seal]

9.

JOSEPHINA MATHILDE PETERSEN

to

E. E. COY.

POWER OF ATTORNEY.

Dated: July 11, 1901.

Acknowledged: July 11, 1901, before notary public  
with seal.

Filed: Dec. 9, 1902, at 9 o'clock A. M.

Recorded: In Vol. I of Deeds at page 89 of Valdez  
Transcript, Kayak Recording District.

One witness.

This instrument gives power and authority to the  
attorney to sell any and all mining claims owned by  
the grantor, and to execute and acknowledge deeds  
and to do any act necessary to carry out the author-  
ity granted.

JOSEPHINA MATHILDE PETERSON. [Seal]

10.

JOHN OLDS

to

ALASKA PETROLEUM AND COAL COMPANY  
(a Corporation).

## QUITCLAIM DEED.

Dated: May 4, 1903.

Acknowledged: May 4, 1903, before notary public  
with seal.

Filed: May 4, 1903, at 8 o'clock A. M.

Recorded: In Vol. I of Deeds, at page 92 of Kayak  
Recording District.

One witness.

This instrument is the usual form of quitclaim deed  
and conveys the undivided one eighth interest in the  
Oil King association mining claim.

JOHN OLDS, [Seal]

By E. E. COY,

His Attorney in Fact. [Seal]

11.

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COM-  
PANY (a Corporation).

QUITCLAIM DEED.

Dated: June 24, 1903.

Acknowledged: June 24, 1903, before notary public  
with seal.

Filed: Aug. 11, 1903, at 9 o'clock A. M.

Recorded: In Vol. I of Deeds, at page 184, of Kayak  
Recording District.

Two witnesses.

Consideration: \$2500.00, and other good and valu-  
able considerations.

This deed recites:

“The said party of the first part does by these pre-  
sents remise, release and forever quitclaim unto the  
said party of the second part and to its successors  
and assigns forever all his right, title and all the  
right, title, and interest and estate of said second  
party in and to those certain placer oil mining claims  
and locations, being association claims of 160 acres  
each situate and being in the Kayak Mining District,  
formerly Valdez Mining District, District of Alaska,  
located in the months of November and December,  
1901, by W. A. Abernethy, W. S. Abernethy, Fred  
Lind, M. W. Bruner and others and more particu-  
larly described and recorded under the following  
names, to wit”:

Oil King and Standard. (with other claims)

M. W. BRUNER. [Seal]

12.

R. J. MAHONEY

to

THE PUBLIC.

## AFFIDAVIT OF LABOR.

Dated: July 15, 1903.

Sworn to before a Commissioner with seal July 15,  
1903.

Filed: July 17, 1903, at 10 o'clock A. M.

Recorded: In Vol. I of Affidavits of Labor at Page  
2 of Kayak Recording District.

This affidavit states that certain expenditures were made and that such expenditure should apply on the assessment work for the Oil King and Stand Oil claims.

Sworn to by

R. J. MAHONEY.

13.

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COMPANY  
(a Corporation).

## AGREEMENT AND QUITCLAIM DEED.

Dated: June 24, 1903.

Acknowledged: June 24, 1903, before notary public  
with seal.

Filed for record Aug. 1, 1903, at 9 o'clock A. M.



Recorded: In Vol. I of Deeds at page 182, of Kayak  
Recording District.

Two witnesses.

Consideration: \$2500.00.

This instrument is an agreement and quitclaim deed with an affidavit attached and made a part of the agreement and deed.

The instrument conveys an undivided one-fourth interest in 29 oil claims which number include Oil King and Standard.

See certified copy of instrument for full provisions contained in instrument.

M. W. BRUNER. [Seal]

14.

ELIHU EMBREE COY and OTTO LOTUS COY

to

WATSON ALLEN.

### QUITCLAIM DEED.

Dated: Feb. 12, 1904.

Acknowledged: Feb. 12, 1904, before U. S. Commissioner with seal.

Filed: Feb. 12, 1904, at 2 o'clock P. M.

Recorded: In Vol. I of Deeds at page 564 of Kayak  
Recording District.

Consideration: \$1.00 and other valuable considerations.

Two witnesses.

This instrument is the usual form of quitclaim deed and conveys the five-eighths interest of the Oil King and Standard with other oil claims.

Also conveys the interests of the grantors in certain oil leases to Cudahy Oil Co. and Alaska Petroleum and Coal Co.

ELIHU EMBREE COY, [Seal]

OTTO LOTUS COY, [Seal]

By E. E. COY,

His Attorney in Fact,

Parties of the First Part.

15.

OTTO LOTUS COY

to

THOMAS G. WHITE.

QUITCLAIM DEED.

Dated: Feb. 17, 1904.

Acknowledged: Feb. 17, 1904, before U. S. Commissioner with seal.

Filed: Feb. 17, 1904, at 11:30 A. M.

Recorded: In Vol. I of Deeds at page 566 of Kayak Recording District.

Two witnesses.

Consideration: \$1.00.

This instrument is the ordinary form of quitclaim deed and conveys to the grantee the Oil King and Standard Oil claims (with other property).

Also any interest in any lease or other instrument in writing affecting any such claims.

OTTO LOTUS COY, [Seal]

By E. E. COY,

His Attorney in Fact,

Party of the First Part.

16.

THOS. G. WHITE

to

E. E. COY.

### QUITCLAIM DEED.

Dated: Feb. 20, 1904.

Acknowledged: Feb. 20, 1904, before U. S. Commissioner with seal.

Filed: Feb. 20, 1904, at 11:30 A. M.

Recorded: In Vol. I of Deeds at page 568 of Kayak Recording District.

Two witnesses.

Consideration: \$1.00.

This instrument is the ordinary form of quitclaim deed and conveys to the grantee the Oil King and Standard Oil claims (with other property).

The instrument recites that it is intended to convey all the interest conveyed to the grantor by the deed recorded on page 566 of Vol. I of Deeds of Kayak Recording District.

THOS. G. WHITE. [Seal]

17.

CHAS. D. DAVIS

to

THE PUBLIC.

AFFIDAVIT OF LABOR.

Dated: Dec. 15, 1904.

Sworn to Dec. 15, 1904, before notary public with seal.

Filed: Jan. 2, 1905, at 9 o'clock A. M.

Recorded: In Vol. I of Affidavits of Labor at page 38 of Kayak Recording District.

This affidavit recites that labor and improvements have been made upon the Oil King and Standard Oil claims (with 3 other claims) during the year 1804 in the sum of \$500.00 on behalf of the Alaska Petroleum and Coal Co. and that such labor and improvements tended to develop the oil bearing qualities of said land.

CHAS. D. DAVIS.

18.

CLARK DAVIS

to

THE PUBLIC.

AFFIDAVIT OF LABOR.

Dated: Dec. 30, 1905.

Sworn to Dec. 7, 1905, before U. S. Commissioner  
with seal.

Filed: Dec. 7, 1905, at 3 o'clock P. M.

Recorded: In Vol. I of Affidavits of Labor at page  
45 of Kayak Recording District.

This affidavit recites that between the first day of January and the 31st day of Dec. 1905, at least \$500.00 worth of work was done and improvements made upon a group of oil claims comprising the Oil King and Standard Oil with two additional oil claims and that the expense of said work and improvements was by the Alaska Petroleum and Coal Co., the owner of the said claims.

CLARK DAVIS.

I, G. C. Britton, United States Commissioner and ex-officio District Recorder of Kayak Recording District, District of Alaska, hereby certify that the foregoing, consisting of ten sheets and eighteen instruments, is a full, true, and correct abstract of the title of the Oil King placer mineral oil claim, therein described, as the same appears in the records of my

office, and shows the location certificate, deeds and other instruments appearing of record purporting to convey or affect said title, by the original locators or their grantees. No conveyance affecting the title to the above-described oil claim appear of record other than those set forth in this abstract.

Witness my hand and official seal this 15th day of May, 1907.

[L. S.]

G. C. BRITTON,

U. S. Commissioner and ex-officio District Recorder.

Compared—O. K.

L. R. GILLETTE.

---

**Defendants' Exhibit No. 10.**

(Jun. 8, 1907. Deft. Exhibit No. 10. Cause No.  
623-A.—A. W. Fox.)

**ABSTRACT OF TITLE**

to

**STANDARD OIL CLAIM**

Situate in

**KAYAK RECORDING DISTRICT,**

**DISTRICT OF ALASKA.**

Compiled by G. C. Britton, U. S. Commissioner  
and ex-officio District Recorder, Katalla, Alaska.

INDEX.

Location Notice .....	1
Powers of Attorney .....	4-5
Deeds .....	3-6-8-9-10-11-12
Affidavits of Labor .....	7-13-14
Agreements .....	2

W. A. ABERNATHY et al.

to

THE PUBLIC.

NOTICE OF LOCATION OF STANDARD OIL  
CLAIM.

1.

Dated: Nov. 23, 1901.

Filed: December 17, 1901.

Recorded: In Vol. 2 of Min. Loc. at page 254, Valdez  
Transcript.

NOTICE OF LOCATION—OIL CLAIM.

District of Alaska,  
Valdez Mining District,—ss.

Notice is hereby given that the undersigned have complied with the requirements of Chapter Six of Title Thirty-two of the Revised Statutes of the United States and the local customs laws and regulations have located one hundred and sixty acres of placer mining ground, situated in Valdez Mining

District, District of Alaska. The name of this claim is the Standard Oil. It adjoins and lies east of the Oil King oil claim described as follows, to wit:

Commencing at the S. E. corner post marked Standard Oil No. 1, thence in a westerly direction 2640 feet to the S. W. corner Post No. 3, thence in a northerly direction 2640 feet to the N. W. corner post No. 5, thence in an easterly direction 2640 feet to the N. E. corner post No. 7, thence in a southerly direction to the place of beginning. This notice is posted on the southeast corner post of said claim and the southerly side is the Ocean.

Oil was discovered November 21st, A. D. 1901.

Located November 23d, A. D. 1901.

W. A. ABERNETHY,

M. W. BRUNER,

THOS. S. WHITE,

WM. CARLESS,

G. T. BARRETT,

P. R. TEMPLE,

E. E. COY,

F. LIND,

By W. A. ABERNETHY,

Locators.

Attest:

FRED LIND.

The above instrument was filed for record at 9 o'clock A. M., December 17, 1901.

JOHN LYONS,

U. S. Commissioner.



2.

W. A. ABERNATHY, E. E. COY and FRED LIND  
with  
Each Other.

AGREEMENT.

Dated: Jan. 17, 1902.

Acknowledged: Jan. 17, 1902, before Notary Public  
with seal.

Filed: July 8, 1902, at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 11 of Valdez  
Transcript, Kayak Recording District.

Two Witnesses.

The instrument recites, that whereas the parties to the instrument having located 29 association oil claims and that prior to locating the same had discovered on each of said claims petroleum, mineral oil, natural gas and other substances.

The agreement provides that each of the parties shall hold an undivided one-third interest in said 29 oil claims and all claims acquired in the future up to the first day of June, 1902.

(With other provisions.)

E. E. COY. [Seal]

W. A. ABERNATHY. [Seal]

FRED LIND. [Seal]

3.

O. E. SAUTER, R. J. MAHONEY and J. H.  
MIRACLE

to

ALASKA PETROLEUM AND COAL COMPANY,  
a Corporation.

Q. C. DEED.

Date: Nov. 18, 1902.

Consideration: \$1.00 and other valuable considera-  
tions.Acknowledged: Nov. 18, 1902, before Notary Public  
with seal.

Filed for record Feb. 2, 1902 at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 122, Valdez  
Transcript, Kayak Recording District.

Two witnesses.

Instrument refers to certain deeds, agreements  
and contracts which the grantee assumes.Conveys Standard Oil and Oil King oil claims  
with other claims.

O. E. SAUTER. [Seal]

R. J. MAHONEY. [Seal]

J. H. MIRACLE. [Seal]

4.

WM. CARLESS, G. T. BARRETT, P. R. TEMPLE,  
T. G. WHITE and M. DUVAL

to

W. A. ABERNATHY.

POWER OF ATTORNEY.

Dated: June 27, 1902.

Acknowledged: June 23, 1902, before notary public  
with seal.

Filed: Nov. 24, 1902 at 12 o'clock M.

Recorded: In Vol. 1 of Deeds at page 48 of Valdez  
Transcript, Kayak Recording District.

Two witnesses.

This instrument recites:

“By these presents do make, constitute and ap-  
point W. A. Abernethy our true and lawful attorney  
for us and in our names and stead with full power  
to act for us (with other matters) pertaining to our  
several or individual interests to certain placer oil  
claims (with others) at Martin Point about three  
miles from Catalla.”

The instrument gives authority to do any and all  
acts necessary.

WM. CARLESS. [Seal]

G. T. BARRETT. [Seal]

P. R. TEMPLE. [Seal]

T. G. WHITE. [Seal]

M. DUVAL. [Seal]

## 5.

FRED LIND

to

E. E. COY.

## POWER OF ATTORNEY.

Dated: Jan. 25, 1902.

Acknowledged: Jan. 25, 1902 before notary public  
with seal.

Filed: Dec. 9, 1902 at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 88 of Valdez  
Transcript, Kayak Recording District.

Two witnesses.

This instrument contains the usual power to locate mineral claims and to sell the same and also claims now owned by the grantor and to manage lease and control the same.

FRED LIND. [Seal]

6

WM. CARLESS, MIKE DUVAL, M. M. COLQUHOUEN, GEORGE T. BARRETT, THOMAS WHITE, and W. A. ABERNETHY,

to

O. E. SAUTER, R. J. MAHONEY and J. H. MIRACLE.

QUITCLAIM DEED.

Dated: Oct. 14, 1902.

Acknowledged: Oct. 14, 1902 before notary public  
with seal.

Filed: No. 26, 1902 at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 53 of Valdez  
Transcript, Kayak Recording District.

Two witnesses.

Consideration: \$1.00

This interest is the ordinary form of quit claim deed and conveys to the grantee all the estate, title and interest of the grantors in and to 29 placer oil claims, including Oil King and Standard Oil claims.

WM. CARLESS. [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

MIKE DUVAL, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

M. M. COLQUHOUN, [Seal]

GEORGE T. BARRETT, [Seal]

By W. A. ABERNETHY,  
His Atty. in Fact.

W. A. ABERNETHY. [Seal]

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COMPANY,  
Corporation.

QUITCLAIM DEED.

Dated: June 24, 1903.

Acknowledged: June 24, 1903, before notary public  
with seal.

Filed: Aug. 11, 1903, at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 184 of Kayak  
Recording District.

Two witnesses.

Consideration: \$2500.00, and other good and valu-  
able considerations.

This deed recites:

“The said party of the first part does by these presents remise, release and forever quit claim unto the said party of the second part and to its successors and assigns forever all his right, title and all the right, title and interest and estate of said second party in and to those certain placer oil mining claims and locations, being association claims of 160 acres each situate and being in the Kayak Mining District, formerly Valdez Mining District, District of Alaska, located in the months of November and December, 1901, by W. A. Abernethy, W. S. Abernethy, Fred

Lind, M. W. Bruner and others and more particularly described and recorded under the following names, to wit.”

Oil King and Standard (with other claims).

M. W. BRUNER. [Seal]

7

R. J. MAHONEY

to

The PUBLIC.

**AFFIDAVIT OF LABOR.**

Dated: July 15, 1903.

Sworn to before a U. S. Commissioner with seal  
July 15, 1903.

Filed: July 17, 1903, at 10 o'clock A. M.

Recorded: In Vol. 1 of Affidavits of Labor at Page  
2 of Kayak Recording District.

This affidavit states that certain expenditures were made on certain oil claims including the Oil King and Standard and that such expenditure should apply on the assessment work for the Oil King and Standard Oil claims.

Sworn to by R. J. MAHONEY.

9

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COMPANY,  
a Corporation.

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COMPANY,  
Corporation.

QUITCLAIM DEED.

Dated: June 24, 1903.

Acknowledged: June 24, 1903, before notary public  
with seal.

Filed: Aug. 11, 1903, at 9 o'clock A. M.

Recorded: In Vol. 1 of Deeds at page 184 of Kayak  
Recording District.

Two witnesses.

Consideration: \$2500.00, and other good and valu-  
able considerations.

This deed recites:

“The said party of the first part does by these presents remise, release and forever quit claim unto the said party of the second part and to its successors and assigns forever all his right, title and all the right, title and interest and estate of said second party in and to those certain placer oil mining claims and locations, being association claims of 160 acres each situate and being in the Kayak Mining District, formerly Valdez Mining District, District of Alaska, located in the months of November and December, 1901, by W. A. Abernethy, W. S. Abernethy, Fred



Lind, M. W. Bruner and others and more particularly described and recorded under the following names, to wit.”

Oil King and Standard (with other claims).

M. W. BRUNER. [Seal]

7

R. J. MAHONEY

to

The PUBLIC.

AFFIDAVIT OF LABOR.

Dated: July 15, 1903.

Sworn to before a U. S. Commissioner with seal  
July 15, 1903.

Filed: July 17, 1903, at 10 o'clock A. M.

Recorded: In Vol. 1 of Affidavits of Labor at Page  
2 of Kayak Recording District.

This affidavit states that certain expenditures were made on certain oil claims including the Oil King and Standard and that such expenditure should apply on the assessment work for the Oil King and Standard Oil claims.

Sworn to by R. J. MAHONEY.

9

M. W. BRUNER

to

ALASKA PETROLEUM AND COAL COMPANY,  
a Corporation.

## AGREEMENT AND QUITCLAIM DEED.

Dated: June 24, 1903.

Acknowledged: June 24, 1903, before notary public  
with seal.

Filed for record Aug. 1, 1903 at 9 o'clock A. M.

Recorded: In Vol. I of Deeds at page 182 of Kayak  
Recording District.

Two witnesses.

Consideration: \$2500.00

This instrument is an agreement and quitclaim deed with an affidavit attached and made a part of the agreement and deed.

The instrument conveys an undivided one-fourth interest in 29 oil claims which number include Oil King and Standard.

See certified copy of instrument for full provisions contained in instrument.

M. W. BRUNER. [Seal]

10

ELIHU EMBREE COY and OTTO LOTUS COY

to

WATSON ALLEN.

## QUITCLAIM DEED.

Dated: Feb. 12, 1904.

Acknowledged: Feb. 12, 1904, before U. S. Commissioner with seal.

Filed: Feb. 12, 1904, at 2 o'clock P. M.

Recorded: In Vol. I of Deeds at page 564 of Kayak Recording District.

Consideration: \$1.00 and other valuable considerations.

Two witnesses.

This instrument is the usual form of quitclaim deed and conveys the five-eighths interest of the Oil King and Standard with other oil claims.

Also conveys the interests of the grantors in certain oil leases to Cudahy Oil Co. and Alaska Petroleum and Coal Co.

ELIHU EMBREE COY. [Seal]

OTTO LOTUS COY, [Seal]

By E. E. COY,  
His Attorney in Fact,  
Parties of the First Part.

11

OTTO LOTUS COY

to

THOMAS G. WHITE.

QUITCLAIM DEED.

Dated: Feb. 17, 1904.

Acknowledged: Feb. 17, 1904, before U. S. Commissioner with seal.

Filed: Feb. 17, 1904, at 11:30 A. M.

Recorded: In Vol. I of Deeds at page 566 of Kayak Recording District.

Two witnesses.

Consideration: \$1.00.

This instrument is the ordinary form of quitclaim deed and conveys to the grantee the Oil King and Standard oil claims (with other property).

Also any interest in any lease or other instrument in writing affecting any such claims.

OTTO LOTUS COY, [Seal]

By E. E. COY,

His Attorney in Fact,

Party of the First Part.

12

THOS. G. WHITE

to

E. E. COY.

QUITCLAIM DEED.

Dated: Feb. 20, 1904.

Acknowledged: Feb. 20, 1904, before U. S. Commissioner with seal.

Filed: Feb. 20, 1904, at 11:30 A. M.

Recorded: In Vol. I of Deeds at page 568 of Kayak Recording District.

Two witnesses.

Consideration: \$1.00.

This instrument is the ordinary form of quitclaim deed and conveys to the grantee the Oil King and Standard Oil claims (with other property).

The instrument recites that it is intended to convey all the interest conveyed to the grantor by the deed recorded on page 566 of Vol. I of Deeds of Kayak Recording District.

THOS. G. WHITE. [Seal]

13.

CHAS. D. DAVIS

to

THE PUBLIC.

AFFIDAVIT OF LABOR.

Dated: Dec. 15, 1904.

Sworn to Dec. 15, 1904, before notary public with seal.

Filed: Jan. 2, 1905, at 9 o'clock A. M.

Recorded: In Vol. I of Affidavits of Labor at page 38 of Kayak Recording District.

This affidavit recites that labor and improvements have been made upon the Oil King and Standard Oil claims (with 3 other claims) during the year 1804 in the sum of \$500.00 on behalf of the Alaska Petroleum and Coal Co. and that such labor and improvements tended to develop the oil bearing qualities of said land.

CHAS. D. DAVIS.

14.

CLARK DAVIS

to

THE PUBLIC.

## AFFIDAVIT OF LABOR.

Dated: Dec. 7, 1905.

Sworn to Dec. 7, 1905 before U. S. Commissioner  
with seal.

Filed: Dec. 7, 1905, at 3 o'clock P. M.

Recorded: In Vol. I of Affidavits of Labor at page  
45 of Kayak Recording District.

This affidavit recites that between the first day of January and the 31st day of Dec..1905, at least \$500.00 worth of work was done and improvements made upon a group of oil claims comprising the Oil King and Standard Oil with two additional oil claims and that the expense of said work and improvements was by the Alaska Petroleum and Coal Co. the owner of the said claims.

CLARK DAVIS.

I, G. C. Britton, United States Commissioner and ex-officio District Recorder of Kayak Recording District, District of Alaska, hereby certify that the foregoing, consisting of eight sheets and fourteen instruments, is a full, true and correct abstract of the title of the Standard Oil placer mineral oil claim, therein described, as the same appears in the records of my office, and shows the location certificate,

deeds and other instruments appearing of record purporting to convey or affect said title, by the original locators or their grantees. No conveyances affecting the title to the above described oil claim appear of record other than those set forth in this abstract.

Witness my hand and official seal this 15th day of May, 1907.

[L. S.]

G. C. BRITTON,

U. S. Commissioner and Ex-officio District Recorder.

Compared—O. K.

L. R. GILLETTE.

---

**Defendants' Exhibit No. 11.**

(Jun. 8, 1907. Deft. Exhibit No. 11. Cause No. 623-A.—A. W. Fox.)

**DEED.**

State of Washington,  
County of King,—ss.

M. W. Bruner, being first duly sworn on oath deposes and says, that he is the owner of that certain individual interest in twenty-nine placer oil mining claims situated in the Kayak Mining District, formerly Valdez Mining District, District of Alaska, this day sold and transferred to the Alaska Petroleum and Coal Company by deed and transfer of grub-

stake contract, which transfer is hereto attached and made a part hereof; and that the said interest has not been sold, transferred, assigned or set over to any other person or persons; but that affiants interest and ownership in and too said property is full and complete at this date, as it was at the date of the location of said placer oil mining claims, or at any time subsequent thereto up to the present date, and that this affidavit is made for the purpose of inducing the said Alaska Petroleum and Coal Company to purchase affiants' interest in and to said placer oil mining claims as set out in the deed and assignment contract hereto attached. And further affiant sayeth not.

M. W. BRUNER. [Seal]

Subscribed and sworn to before me this 24th day of June, A. D. 1903.

JAMES J. McCAFFERTY,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

This agreement made and entered into this 24th day of June, A. D. 1903, by and between M. W. Bruner, of Washington, party of the first part, and the Alaska Petroleum and Coal Company, a corporation, organized and doing business under the laws of the State of Washington, party of the second part, Witnesseth:



That whereas the said party of the first part has this day executed and delivered to the said party of the second part his certain quit claim deed to all his right, title and interest in and to the placer oil mining claims hereinafter set out and described, and whereas the said party of the first part claims to be an owner of an undivided one-fourth ( $\frac{1}{4}$ ) interest in and to every of said claims by virtue of a grubstake contract, so-called, entered into between the party of the first part, E. E. Coy, and W. A. Abernathy, of Nome, Alaska, about the month of October, 1901, under and by virtue of the terms of which all oil lands located by the said Abernathy and Coy in the fall or early winter of 1901 were to be owned jointly by the said parties and their associates in the following proportions, to wit: M. W. Bruner, one-fourth ( $\frac{1}{4}$ ); W. A. Abernathy, one-fourth ( $\frac{1}{4}$ ), and E. E. Coy and his associates one-half ( $\frac{1}{2}$ ); and whereas in the said locations so made by the said Abernathy and Coy under said agreement the name and interest of the said M. W. Bruner were not contained therein to the extent of an individual one-fourth interest, and whereas, no division of the oil lands so located has been made or entered into between the said locators, and whereas, the said M. W. Bruner is not possessed on the face of the record and location notices of an undivided one-fourth ( $\frac{1}{4}$ ) interest in and to the said placer oil mining claims as hereinafter set

out and described, and whereas the said M. W. ——— is entitled to maintain an action against the said E. E. Coy, W. A. Abernethy, and other locators for an undivided one-fourth ( $\frac{1}{4}$ ) interest in and to all of said mining claims.

Now, therefore, this indenture witnesseth: That for and in consideration of the sum of two thousand five hundred dollars (\$2500), of lawful money of the United States, in hand paid to the said M. W. Bruner by the Alaska Petroleum and Coal Company, the said M. W. Bruner does hereby sell, assign, transfer and set over unto the Alaska Petroleum and Coal Company, all his right, title and interest in and to the said placer oil mining claims, and all his right of action existing under and by virtue of his grubstake contract, socalled, to an undivided one-fourth ( $\frac{1}{4}$ ) interest in and to the said placer oil mining claims to the Alaska Petroleum and Coal Company, its successors or assigns, and does by these presents authorize and empower the said Alaska Petroleum and Coal Company in its own name and at its own proper cost and expense to institute and prosecute all actions, either at law or in equity, which may be necessary to obtain to itself the rights to the hereinafter described placer oil mining claims which the said M. W. Bruner at any time owned or possessed under and by virtue of the said grubstake contract or otherwise; and the said placer oil mining claims referred

to in this contract are located in the Kayak Mining District, in the District of Alaska, formerly the Valdez Mining District, and are known and described as follows, to wit: "Boss," Atlantic, Kayak, Phoenix, Oil King, Empire, Record, Standard, Oil Gulch, Senator, Mutual, Pacific, Chilcat, said claims being located at Catella Bay, including Martin Island. Also the following sixteen (16) placer oil mining claims located by the same parties, through the same months and located in the said Kayak Mining District, formerly Valdez District, District of Alaska, upon Big Kayak Island, to wit: Superb, Wonder, Oil Belt, Oil Queen, Governor, Chief, Fountain, Regal, Premier, London, Excelsior, Anna, Helen, Vesuvius, Peerless, and Josephine.

In testimony whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

M. W. BRUNER. [Seal]

Witness:

CLARK DAVIS.

H. R. HARRIMAN.

State of Washington,  
County of King,—ss.

I, H. R. Harriman, a Notary Public, do hereby certify that on this 24th day of June, 1903, there personally appeared before me, M. W. Bruner, to me known to be the individual described in, and who

executed the within instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and for the uses and purposes therein mentioned.

[Notarial Seal]                      H. R. HARRIMAN,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

This instrument was filed for record at 9 o'clock A. M., Aug. 1, '03, and recorded Sept. 5, 1903.

WM. H. WHITTLESEY,  
District Recorder.

I, G. C. Britton, United States Commissioner and ex-officio District Recorder for Kayak Recording District, District of Alaska, do hereby certify that I have compared the attached copy with the record of the original instrument, as the same appears of record in Volume one of Deeds, at pages 182 and 183 thereof, in the official records in the office of the District Recorder of Kayak Recording District, District of Alaska, and the same is a full, true, and complete copy of said record, and the official certificate of the filing of said instrument and the whole thereof.

Witness my hand and official seal this fifteenth day of May, 1907.

[L. S.]                                      G. C. BRITTON,  
United States Commissioner and Ex-officio District  
Recorder.

Compared.—O. K.

L. R. GILLETTE.

**Defendants' Exhibit No. 12.**

Jun. 8, 1907. (Deft. Exhibit No. 12. Cause No.  
623-A.—A. W. Fox.)

May 4th, 1905.

This is to certify that we have this day appointed M. W Bruner "agent" within the District of Alaska, for the Alaska Pacific Railway And Terminal Company, a corporation, with its principal place of business without the district at Seattle, Washington, and its principal place of business within the District at Kayak. We further certify the said company consents to be sued in the courts of the District upon all causes of action arising against it in said district, and that service of process may be made upon M. W. Bruner, the agent aforesaid, and the same shall be a good and valid service.

[Corporate Seal]

JAMES BUZZARD,

President.

J. C. JEFFERY,

Secretary.

May 4th, 1905.

This is to certify that I, M. W. Bruner, have been appointed "agent" for the Alaska Pacific Railway And Terminal Company, a corporation, within the District of Alaska, having my place of residence at Kayak, in said district. I hereby accept and consent

to act as agent for said company, and will accept service of any and all papers that might be served upon the company by leaving a copy of such service with me.

(Signed) M. W. BRUNER. [Seal]

The following proposition was made to the trustees as aforesaid :

That whereas, one, Peter F. Byrne, of Spokane, Washington, has located a tract of land of about 60 acres on Controller Bay, in the Kayak Precinct of the District of Alaska, under a soldier's additional homestead law, survey No. 572:

That said Byrne caused to be located a line of railroad extending from Martin's Island in Controller Bay to the North side of Chilcoot Lake, otherwise known as Behering Lake, a distance of 14.716 miles, and has caused a preliminary survey to be made of said line and has caused the plats of said preliminary survey to be filed in the office of the Surveyor General of said District, as required by law; said preliminary survey, including harbor rights on said Martin's Island and Controller Bay.

And, Whereas,

On the 8th day of February, 1905, said Byrne, for a valuable consideration, gave to one Milton W. Bruner, an option on the land and surveys described as aforesaid, and thereafter continued said option until the 1st day of September, 1905,

Now, therefore, the said Bruner for a valuable consideration has this day offered to this company the above proposition, and after due consideration by said trustees the above proposition is hereby accepted and ratified by the trustees of the Alaska Pacific Railway And Terminal Company.

In witness whereof the president and secretary have hereunto set their hands and affixed the corporate seal of said company this 4th day of May, 1905.

[Corporate Seal]                    JAMES BUZZARD,  
President.

JAMES C. JEFFERY,  
Secretary.

1345                                    office of the                    Art. No. 16031.

STATE OF WASHINGTON.  
SECRETARY OF STATE.

I, Sam H. Nichols, Secretary of State of the State of Washington, do hereby certify that I have carefully compared the annexed copy of the

ARTICLES OF INCORPORATION  
OF THE

“ALASKA PACIFIC RAILWAY & TERMINAL  
COMPANY.”

(OF SEATTLE, WASH.)

with the original articles thereof, as filed for record and recorded in this office on the 8th day of May,

A. D. 1905, at page 64, book 47, Domestic Corporations, and find the same to be a true and perfect copy thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of the State of Washington.

Done at Olympia, this 9th day of May, in the year of our Lord, 1905.

[Seal of the State of Washington.]

SAM H. NICHOLS,

Secretary of State.

By \_\_\_\_\_,

Chief Clerk.

## ARTICLES OF INCORPORATION

of the

### ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY.

Know All Men by These Presents: That we, James Buzzard, J. C. Jeffery and William Wray, all of whom are citizens of the United States and residents of the State of Washington, have this day associated ourselves together for the purpose of forming a corporation, and do hereby form a corporation under and by virtue of the laws of the State of Washington, and certify as follows:



I.

That the corporate name of said corporation shall be "ALASKA PACIFIC RAILWAY AND TERMINAL COMPANY."

II.

That the amount of capital stock of said corporation shall be Two Million (2,000,000.00) Dollars, and the same shall be divided into Twenty Thousand (20,000) shares of the par value of One Hundred (\$100.00) Dollars each.

III.

That the time of the existence of said corporation shall be Fifty (50) years from the date hereof.

IV.

That the number of Trustees of said corporation shall be Three (3), and the names of those who shall manage the concerns of the Company until the 5th day of July, A. D. 1905, are: James Buzard, J. C. Jeffery and William Wray.

V.

The name of the city in which the principal place of business of the company shall be located is, the city of Seattle, King County, State of Washington.

VI.

That the objects for which said corporation is formed are the following, to wit:

First: To purchase or otherwise acquire, hold, improve, lease, let, mortgage, sell, convey and otherwise dispose of lands and all other real and personal property of every kind; to improve lands and to develop the resources of lands; to lay out townsites; to open, improve, and grade streets; to fill, reclaim and otherwise improve tide lands in the district of Alaska or elsewhere.

Second: To lay out, construct, furnish and equip a railroad line and railroad from a point on the northern part of Martins Island in the District of Alaska, by some practicable and convenient route, in a northerly direction from the Pacific Ocean, or some bay or inlet thereof; and also to extend, lay out, construct, furnish and equip said railroad line and railroad from such point at or near the northerly point of Martins Island to such other point or points on the waters of the Pacific Ocean and the branches and inlets thereof, as may be hereafter determined upon by said corporation, and also to lay out, construct, furnish and equip such branch railroads and railroad lines connecting said main railroad line with other points on Martins Island and other points in the interior of the District of Alaska, as may hereafter be determined upon by said corporation; also to maintain and operate the said lines of railroad and said branch and said branch railroads; also to

purchase, consolidate with, lease or otherwise acquire, maintain and operate, on such terms as may be agreed upon, any other railroads, together with their telegraph lines, equipments, and appurtenances, which may connect with the railroads or branches of this company, or which are now constructed, or may hereafter be constructed upon the route or routes of the main line or lines or branches of the railroad or railroads of this company, or any part thereof, by any other company; and to purchase the property of such other company, real, personal, and mixed, and thereafter to own, control, manage and operate such other railroads, with their equipments and appurtenances, and for such purposes to subscribe for and purchase all or any portion of the capital stock or bonds of any company owning or operating any such railroad or telegraph line, and to guarantee or otherwise secure the payment of such bonds or the interest thereon, or stock or dividend thereof, by pledge or mortgage of the property of this corporation, or any part thereof, or in any other manner that shall be deemed expedient; also to use and employ in the management and operation of said railroad and railroad lines, or any part thereof, any kind of power whatever, whether now known or hereafter to be invented or applied; and to receive compensation, fares and tolls for the transportation of freight, goods and passengers thereon; and to act as a common carrier

of freight, goods, and passengers, and to construct, build, equip, purchase, lease, own, maintain, manage and operate all such engines, cars, rolling-stock, machinery, appliances, property and rights as may be necessary and convenient in the carrying out the furtherance of these objects.

Third. To construct, own, equip, maintain, manage, and operate stage lines, wagon roads, logging roads, plank roads, tramways, and all other roads of every kind, and to receive compensation, fares, and tolls for the transportation of freight, goods and passengers thereon, or other use thereof.

Fourth.—To build, construct, lease, charter, own, maintain and operate upon and about the waters of the Pacific Ocean, and upon all the rivers, inlets, and tributaries thereof, and upon all other bodies of water whatever, inland and foreign, steamboats, ships and vessels of all kinds, and other water crafts, for the transportation of goods, freight, and passengers, to act as a common carrier thereon, and to collect and receive fares and tolls for transportation thereon.

Fifth. To purchase, acquire, lease, charter, build, construct, own, maintain and operate, scows and tug boats for towing purposes and to tow ships, vessels, scows, barges, logs, spars, poles, piles, and lumber, and all other crafts and things whatever, and to receive compensation therefor.

Sixth. To engage in the business of wharfing, dockage and warehousing, and to build wharves, piers, warehouses and docks, and to purchase, lease or let the same, and the rights and privileges thereunto belonging and to build, own or lease all such warehouses, docks and wharves, together with the business incident thereto, and to charge, collect, and to receive for the use of said docks, wharves and warehouses, compensation and tools.

Seventh. To purchase, acquire, build, construct, sell, own, lease, maintain and operate sawmills, planing mills and mills and manufactories of all kinds in which lumber or the manufactures thereof may be sawn, planed, dressed, finished manufactured or otherwise worked; and to purchase, lease, acquire, build, own, control, maintain and operate all such engines, machinery, plants, appliances, property and rights as may be necessary and convenient in carrying out and furtherance of these objects.

Eighth. To manufacture, buy and sell lumber of all kinds, including shingles, lath and sash, doors, windows, mouldings and all other articles which are or may be manufactured from wood.

Ninth. To purchase, acquire, own, lease, and sell timber lands and timber standing on lands, and to buy and sell logs, spars, poles, piles, and ties, and all other kinds of timber.

Tenth. To purchase, acquire, lease, own, construct, maintain and operate logging camps, and to saw, cut, haul, procure and get logs, spars, poles, piles, and ties, and all other kinds of timber, and to purchase, lease, acquire, construct, own, control, maintain and operate all such engines, machinery, plants, appliances, tools, property and rights as may be necessary and convenient in the carrying out and furtherance of these objects.

Eleventh. To build, construct, own, lease, let, manage and operate bridges, stores, storehouses, houses and buildings of every kind.

Twelfth. To construct, purchase, or otherwise acquire, equip, furnish, lease and sell telegraph and telephone lines; to manage and operate the same, to transmit messages and receive tolls and compensation therefor.

Thirteenth. To construct, purchase, or otherwise acquire, lease, own and operate water works, aqueducts, water flumes and canals for the purpose of slugging water and water power to the public and private corporations and individuals and to receive tolls and compensation therefor.

Fourteenth. To construct, purchase and otherwise acquire, lease, own, and operate gas works, and electric light and power works for the purpose of generating and producing and supplying gas for fuel and illuminating and other purposes, and for

the purpose of generating and producing electric light and power, and to supply cities, towns, public and private corporations, and individuals with gas, electric light and power, and electricity for any purpose whatever, and to receive tolls and compensation therefor.

Fifteenth. To construct, make, equip, own, purchase, lease, maintain and operate canals, for the passage of ships, vessels, boats and other crafts, and for logs and lumber, and to receive compensation, fares and tolls, for the transportation of freight, goods and passengers thereon or other use thereof; also to construct, equip, own, purchase, lease, maintain and operate water flumes and sluices for the transportation of logs, timber and other kinds of lumber, and any other articles whatever, and to charge and receive compensation for the use thereof.

Sixteenth. To purchase or otherwise acquire, own, lease, develop and operate mines of coal and mines of gold, silver, copper, iron, lead, tin, and mines of any and every kind of mineral and metal whatever, and stone quarries and quarries of every kind; and to buy, sell, market and transport the product of any mine or quarry.

Seventeenth. To construct, purchase, or otherwise acquire, lease, own, maintain and operate smelters, mills, furnaces and all other buildings, machinery and apparatus for producing, reducing, re-

fining, developing and perfecting minerals, metals and the products of mines and quarries.

Eighteenth. To purchase or otherwise acquire, lease, mortgage, sell and otherwise deal in goods, wares and merchandise, and all kinds of personal property, and to carry on a general mercantile business at wholesale and retail.

Nineteenth. To construct, purchase or otherwise acquire, own, lease, manage, maintain and operate booming grounds, as sorting booms, rafting booms, sheer booms, holding booms and all other booms of every kind for the purpose of collecting, holding, assorting, rafting or otherwise handling logs, spars, poles, piles and timber and lumbering of every kind, and to receive compensation and tolls for any use thereof; also to clear, open and dam rivers and streams, whenever authorized or permitted by law, for the purpose of floating logs and all other kinds of timber and lumber whatever, and to charge and receive compensation therefor.

Twentieth. To purchase, hold, own, and sell the stocks, bonds, and securities of such corporations as may be deemed expedient.

Twenty-first. To appropriate land, real estate, premises and other property for right of way for any of the objects herein specified or for any other corporate purposes in all cases where such right of appropriations or shall be conferred on corporations



of like character by general laws of the District of Alaska, and to ascertain and make due compensation therefor in such manner as is or shall be prescribed by the laws of the said District of Alaska.

Twenty-second. To issue bonds, to borrow money on bonds, notes and debentures and otherwise, for the general purposes of his corporation, and to aid in and carry out any of the objects herein set forth; and to mortgage all or any part of the property and franchises of this corporation of whatever kind, to secure the payment thereof.

Twenty-third. To do all other acts and things necessary and convenient for accomplishing the objects hereinafter specified.

In witness whereof, we, the said James Buzard, J. C. Jeffery and William Wray, have hereunto set our hands and seals in triplicate hereof, this 4th day of May, A. D. 1905.

Signed—JAMES BUZZARD. [Seal]

Signed—J. C. JEFFREY. [Seal]

Signed—WILLIAM WRAY. [Seal]

In the presence of:

CHAS. E. McAVOY.

State of Washington,  
County of King,—ss.

This is to certify that on this 4th day of May, A. D. 1905, before me, the undersigned, a Notary Public

in and for the State of Washington, duly commissioned and sworn, personally James Buzzard, J. C. Jeffery and William Wray, to me known to be the individuals described in and who executed the foregoing articles of incorporation, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

[Seal] CHAS. E. McAVOY,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: "Filed for record in the office of the Secretary of State May 8, 1905, and recorded in book 47, page 64, Domestic Corporations.

SAM H. NICHOLS,  
Secretary of State."

[Endorsed]: No. ——. Certified Copy of Alaska Pacific Railway and Terminal Company, and Appointment and Consent of Agent. Filed in the Office of the Secretary of Alaska, 19 day of May, A. D. 1905. Wm. L. Distin, Secretary of Alaska.

#### STATEMENT OF COMPANY'S AFFAIRS.

- I. Capital Stock, \$2,000,000.
- II. Amount of capital stock paid in in money,  
None.

- III. Amount of capital stock paid in in any other way, \$2,000,000 paid for establishing a preliminary survey for a railroad, terminals, harbor rights, etc.
- IV. Assets consist of the preliminary survey for a railroad, including harbor rights and terminals, together with the rights, franchises and privileges incident thereto. Cash value, \$2,000,000.
- V. Liabilities are none.

State of Washington,  
County of King,—ss.

James Buzzard and J. C. Jeffery being first duly sworn upon his oath, each for himself, deposes and says: That they are the president and secretary, respectively, of the Alaska Pacific Railway and Terminal Company. That the above statement is true and correct as to the conditions of said Company.

Signed—JAMES BUZZARD,  
President.

Signed—J. C. JEFFERY,  
Secretary.

Trustees:

JAMES BUZZARD. [Corporate Seal]  
WILLIAM WRAY.

Subscribed and sworn to before me this 16th day of August, 1905.

[Seal]

WILLIAM WRAY.

Notary Public.

[Endorsed: Alaska Pacific Railway and Terminal Company, a Corporation. Statement of Company's Affairs. Filed in the Office of the Secretary of Alaska, 22 day of August, A. D. 1905. Wm. L. Distin, Secretary of Alaska.

STATEMENT OF COMPANY'S AFFAIRS.  
of the

ALASKA PACIFIC RAILWAY & TERMINAL  
COMPANY.

- I. Capital Stock, \$2,000,000.00
- II. Amount of capital stock paid in in money.  
None.
- III. Amount of capital stock paid in in any other way, \$2,000,000.00, paid for establishing a preliminary survey for a railroad, terminals, harbor rights, etc.
- IV. Assets consist of the preliminary survey for a railway including harbor rights and terminals, together with the rights of franchise and privileges incident thereto.
- V. Value, \$2,000,000.00.
- VI. Liabilities, \$10,439.80, Unsecured.

State of Washington,  
County of King,—ss.

A. W. Cook and William Wray being first duly sworn upon his oath each for himself deposes and says: That they are the President and Secretary respectively of the Alaska Pacific Railway & Terminal Company; that the above statement is true and correct as to the affairs and conditions of said company on the first day of July, 1906.

[Corporate Seal]      Signed—A. W. COOK,  
President.  
WILLIAM WRAY,  
Secretary.

Attested by a majority of its board of Trustees.  
A. W. COOK,  
WILLIAM WRAY,  
Trustees.

Subscribed and sworn to in duplicate before me this 21st day of May, 1907.

[Seal]      W. M. WILLIAMS,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Annual Statement of the Alaska Pacific Railway & Terminal Company for 1906. Filed in the Office of the Secretary of Alaska, 31 day of May, A. D. 1907. Wm. L. Distin, Secretary of Alaska.

United States of America,  
District of Alaska,—ss.

I, William L. Distin, Secretary of the District of Alaska, do hereby certify that the above and foregoing and hereto annexed fourteen pages of typewritten matter, numbered from one to fourteen, both inclusive, constitute a full, true and correct copy, and the whole thereof, of—

Certified Copy of Articles of Incorporation, Appointment and Consent of Agent, of Alaska Pacific Railway & Terminal Company, a foreign corporation, on file in this office under date of May 19, 1905;

Statement of Company's Affairs of Alaska Pacific Railway & Terminal Company, a foreign corporation, on file in this office under date of August 22, 1905;

Annual Statement of the Alaska Pacific Railway & Terminal Company, a foreign corporation, on file in this office under date of May 31, 1907.

I further certify that the above-named documents embrace all the incorporation papers of the said Alaska Pacific Railway & Terminal Company that have been placed upon the files of this office to date.

In testimony whereof, I have hereunto set my hand and affixed the Great Seal of Alaska, at Juneau, this 1st day of June, A. D. 1907.

[Seal]

WM. L. DISTIN,  
Secretary of Alaska.

[Endorsed]: No. 1491. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Pacific Railway and Terminal Company, a Corporation, Appellant, vs. The Copper River and Northwestern Railway Company, a Corporation, Katalla Company, a Corporation, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed August 13, 1907.

F. D. MONCKTON,  
Clerk.





**Plaintiffs' Exhibit No. 16.**

(Jun. 10, 1907. Plaintiffs' Exhibit No. 16. Cause  
No. 623-A. A. W. Fox. pp. 89 to 103, Inc.)

---

[Excerpt from]

Bulletin No. 314      Series A, Economic Geology, 94

DEPARTMENT OF THE INTERIOR

UNITED STATES GEOLOGICAL SURVEY

CHARLES D. WALCOTT, DIRECTOR

---

**Report**

ON

**PROGRESS OF INVESTIGATIONS OF MIN-  
ERAL RESOURCES OF ALASKA**

IN

**1906**

BY ALFRED H. BROOKS AND OTHERS

WASHINGTON

GOVERNMENT PRINTING OFFICE

1907



(Jun. 10, 1907. Plff. Exhibit No. 16. Cause No. 623-A. A. W. Fox. pp. 89 to 103, inclusive.)

## PETROLEUM AT CONTROLLER BAY.

By G. C. Martin.

### INTRODUCTION.

#### LOCATION.

The Controller Bay petroleum field is located on the north shore of the bay, which is a few miles east of the mouth of Copper River, in longitude  $144^{\circ}$  to  $144^{\circ} 40'$  west, latitude  $60^{\circ} 10'$  to  $60^{\circ} 15'$  north. The localities at which there are known indications of petroleum are confined to a belt about 25 miles long from east to west and from 4 to 8 miles wide from north to south. (See fig. 1.) This belt is adjoined on the north in part by the Bering River coal

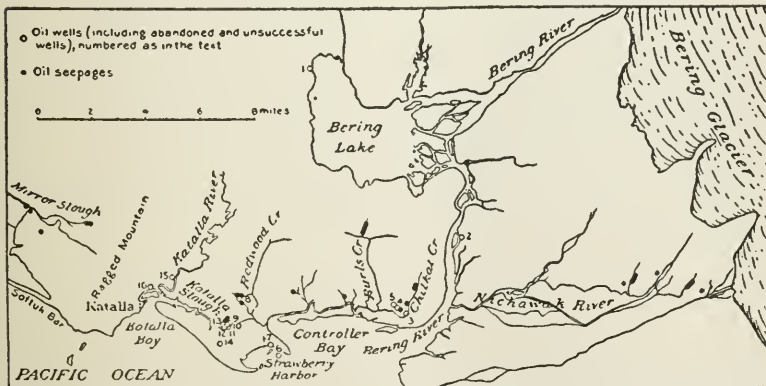


Fig. 1.—Map of Controller Bay oil field, showing position of wells and see pages.

field. Its southern border is formed by Controller Bay and the Pacific Ocean and by the alluvial flats on the east shore of Controller Bay. The eastern and western terminations are formed by Bering Glacier and by the Copper River delta, respectively.

#### OUTLINE OF THE GEOLOGY.

The geology of the region and the occurrence of petroleum have already been described,<sup>a</sup> but more detailed geologic work and further developments have added much to the knowledge which was available when these papers were written. A final report on the geology and mineral resources of the region is now in preparation. The present paper contains an abstract of such parts of that report as relate to petroleum.

---

<sup>a</sup>Petroleum fields of Alaska and the Bering River coal fields: Bull. U. S. Geol. Survey No. 225, 1904, pp. 365-382. The petroleum fields of the Pacific Coast of Alaska, with an account of the Bering River coal deposits: Bull. U. S. Geol. Survey No. 250, 1905, 64 pp. Notes on the petroleum fields of Alaska: Bull. U. S. Geol. Survey No. 259, 1905, pp. 128-135.

The general stratigraphic sequence in this region is represented in the following table:

Generalized Section of Rocks in the Controller Bay Region.

Age	Character of beds.	Thickness. Feet.
Quaternary .	} Fluvialite, glacial, and beach deposits . . . . .	0-500+
		} Marine sands and clays . .
Tertiary . . . . .	Shales, sandstones, con- glomerates, and arkose	12,000+
Paleozoic or Me- sozoic (?) . . . . .	Slate and graywacke with interbedded or intrusive greenstone and other igneous rocks . . . . .	. . . . .

The oldest rocks of the region are the slates and graywackes, with associated igneous rocks, which make up the mass of Ragged Mountain and the low hills west of it and constitute all but the southeastern extremity of Wingham Island. The observed contacts of these rocks with the Tertiary rocks are faults. The amount of metamorphism which these rocks have undergone as compared with the Tertiary rocks, which though in direct contact with them are entirely unmetamorphosed, proves a much greater age for the former and a great unconformity between them and the Tertiary rocks. The lithologic similarity of these

older rocks to the Paleozoic or very early Mesozoic rocks at Yakutat, Orca, and Kodiak is suggestive of a corresponding age.

The Tertiary sediments consist of monotonous repetitions of shales and sandstones, with an included mass of coal-bearing arkose, and one or more massive conglomerates. The total thickness, as stated in the foregoing table, is at least 12,000 feet. The structure of the region in which these rocks outcrop is complex, exposures are wanting at many critical points, and neither the lithologic character of the beds nor the fossils which they contain are sufficiently distinctive to make it possible to recognize with certainty the complete stratigraphic succession.

The presence of two easily recognized kind of rock, the arkost and the conglomerate, gives distinctive character to two parts of the stratigraphic column. The arkose is restricted in areal distribution to the region north of Bering Lake, and the conglomerate to the region south of the lake. Between these regions are areas of no outcrops, and none of the beds of either region can be recognized with certainty in the other. The following sections represent the rocks north and south of the lake:

*Section north of Bering Lake.*

	Feet.
a. Sandstone.....	500
b. Shale with thin flaggy sandstones and with occasional calcareous concretions.....	2,000
c. Arkose with many coal beds and with some shale and sandstone <sup>a</sup> .....	3,000
d. Shale and sandstone.....	1,000+

*Section south of Bering Lake.*

	Feet.
e. Conglomerate and conglomeratic sandstones interbedded with shale and flaggy sandstones.....	3,000
f. Soft shale with calcareous concretions and a bed of glauconite near the base.....	2,000
g. Sandstone.....	1,000
h. Soft shale.....	500

The succession in each of these sections may be assumed as reasonably correct, although there is a possibility that the thicknesses are too great because of the repetition of the less characteristic beds by faulting. The correlation of the beds of one section with those of the other rests at present on evidence which is incomplete and unsatisfactory and must be regarded as suggestive rather than proved. It is probable that one of two correlations is true. The shale and

<sup>a</sup> The Kushtaka formation of earlier reports.

sandstone (*d*) may overlie the conglomerates (*e*), with a concealed interval of unknown extent between them; or *a* and *b* may be identical with *g* and *h*. In the former case the conglomerates underlie the coal field; in the latter case the coal underlies all or nearly all of the entire region under discussion. The stratigraphic and structural field evidence proves nothing either way, but suggests as the most probable relation, that the entire section north of Bering Lake overlies the section south of the lake.

The Quaternary deposits form the surface of practically all the low flats of the entire region. They fill all the large valleys to a considerable depth, which in one place is known to exceed 500 feet.

#### DEVELOPMENTS.

Active attempts to produce petroleum in commercial quantities in this region have been made for the last five years. The first well was begun in the summer of 1901, but no oil was produced and no great depth was reached, as the tools were soon lost and the well abandoned. The next year the same people drilled another well and obtained some oil. Six wells were being drilled in 1903. The following year witnessed the greatest activity that the region has seen, eight wells being in progress. In 1905 and 1906 operations were restricted to two wells.

The result of these operations has been to obtain one well which yields a moderate amount of oil, an-



other well which is capped, but in which the oil has at times a considerable pressure, and two more wells in which an unknown amount of oil stands near the top of the casing.

Drilling has proved to be very difficult and expensive and the results are not as encouraging as had been hoped. These facts, together with the uncertainty as to the amount of territory which one concern may legally control, and the equally great uncertainty as to the conditions of the market, have led to a suspension of some of the more active operations.

The petroleum obtained in the region, both from the seepages and from the walls, is all a high-grade, light-gravity, refining oil, with paraffin base and high content of naphthas and burning oils. The character of the oil has already been described <sup>a</sup> by the writer and no new information is available.

## OCCURRENCE OF PETROLEUM.

### SEEPAGES.

#### Geographic Distribution.

It may be seen from inspection of the map (fig. 1), that the seepages all occur within a long, narrow belt extending from the edge of the Copper River delta to Bering Glacier, a distance of about 28 miles from east

<sup>a</sup> Bull U. S. Geol. Survey No. 250, 1905, pp. 57-58.

to west. The belt is very narrow, not exceeding 4 miles at the widest known point, and is parallel to the north shore of Controller Bay, which has the same east-west direction as the larger aspect of the shore of the Pacific Ocean between Copper River and Yakutat Bay. The seepages at Cape Yatag<sup>b</sup> are also reported to lie on a line having the same direction as this and practically coinciding with it in extended position. Several of the smaller groups of seepages, such as the group on Redwood Creek and at the head of Katalla Slough, and those in the valleys of Burls and Chilkat creeks, and in the Nichawak region, have a distinct linear arrangement, each extending in a direction of about N. 15° E. These lines coincide with the direction of the valleys in which they occur, and the relationship suggested is that either the position of the valley and that of the line of seepages are due to the same cause or that the former is the cause of the latter.

#### Relation to Kinds of Rocks.

The oil of the seepages reaches the surface through a variety of rocks. (See pp. 93-95.) The seepages west of Katalla are associated with metamorphic rocks, the oil coming to the surface either through the joints and bedding or cleavage planes of the slate and graywacke or through surficial deposits which

<sup>b</sup> Locally known as Cape Yakataga.

probably overlie such rocks. The presence of petroleum in rocks of this character is somewhat unusual and worthy of notice. Similar occurrences of small quantities of oil in metamorphic rocks are known in California and Washington, where the oil is considered to have migrated into the metamorphic rocks subsequent to their alteration. A similar explanation may account for the Alaska occurrence. The writer would suggest as a possible explanation that the metamorphic rocks, which are known to be separated from the Tertiary shales by a fault, are overthrust upon the shales along a fault plane of low hade, and that the oil at the seepages west of Ragged Mountain is coming through the metamorphic rocks from underlying shales.

The seepages at the head of Katalla Slough and on Redwood, Burls, and Chilkat creeks are all in the soft shales, which have previously been called the Katalla formation (*f* of section on p. 91). Those between Redwood and Burls creeks are associated with conglomerates of presumably higher position (*e* of the section). Such of the seepages of the Nichawak region as have been seen by the writer are in shales which closely resemble those referred to above. The Cape Yaktag seepages are said to be in Miocene sandstones and shales.

### Relation to the Structure.

The position of the seepages with reference to the structure is somewhat vague and uncertain. Those west of Katalla are on steeply folded rocks in which the structural features have not been determined. The group on Redwood Creek and Katalla Slough is apparently in close proximity to a fault. The Burls Creek and Redwood Creek groups are each near the axis of an anticline, the Redwood Creek anticline being probably broken near or west of its axis by a fault. The seepages between Burls and Redwood creeks are on monoclinial conglomerates. The general structure of the Nichawak region has not been determined, but the rocks have steep dips and are probably closely and complexly folded. The Yaktag region, which has not been visited by the writer, is said to have an anticline near and parallel to the coast, north of which the rocks have a monoclinial northward dip. The seepages are said to occur on the north flank of the anticline, parallel to and not far from its axis.

### Description of the Seepages.

Petroleum seepages and gas springs are very numerous in many parts of the oil belt, and at some of them the flow of oil or of gas is large.

Several large oil seepages were seen by the writer on the banks of Mirror Slough, near the mouth of Martin River. The petroleum comes to the surface

from the clay and mud of the valley floor, and a large amount has accumulated in the pools on the swampy surface and in the soil. The nearest outcrops of hard rock are sandstones or graywackes, probably the same as those on Wingham Island and in Ragged Mountain, and if so of pre-Tertiary age. It seems almost certain that the oil came from these rocks. Seepages were also seen near the head of Mirror Slough at the base of Ragged Mountain. The oil here reaches the surface from the soil, which is underlain either by glacial drift or by talus or landslide debris. The underlying rocks are probably the slate or graywacke referred to above. Another seepage about 1 mile south of this point, in the canyon immediately north of Bald Mountain, was visited by the writer. The oil was here seen oozing in small quantities directly from the joints and bedding planes of the steeply dripping slates and graywackes.

Oil is reported to have been seen in large amounts at the time of the earthquake in September, 1899, on the surface of the water of the small ponds and the creek at the south end of Katalla. The surface material consists of rock debris, largely from Ragged Mountain, underlain by the soft shales previously described as the Katalla formation.

Numerous and copious seepages are to be seen at the head of Katalla Slough. The oil impregnates the soil very completely at many points and has accu-

mulated in large amounts on the surface, but these accumulations are chiefly of oil and are not residues, as at the California brea deposits. No outcrops are near, but the underlying rock is almost certainly the soft shale referred to above, and probably has a steep dip.

On the west slope of the valley of Redwood Creek, about  $11\frac{1}{2}$  miles northwest of the mouth of the creek and near a well, oil can be seen coming directly from soft fissile iron-stained shales. The shale has been broken into small angular fragments and recemented by ferruginous material. This condition is common at or near seepages in these shales, but we do not know whether it is a surface condition connected with erosion or whether it indicates crushing of the rocks at a depth below the surface during the process of folding or faulting. Here, as at many other seepages, sulphur springs are associated with the oil. Another seepage was seen near the headwaters of Redwood Creek.

It is reported that oil may be seen at low tide in the beach sands on the north shore of Strawberry Harbor. The rocks in the vicinity are sandstone and shale, probably belonging much higher in the stratigraphic column than the soft shale at the seepages previously described.

There are several seepages along the wagon road which leads from the head of Katalla Slough to the

mouth of Bering River. Two of them are located about a mile and a half west of Burls Creek and close to the road. The amount of oil at one of these is large. The nearest visible rock is steeply dipping conglomerate, which outcrops a few feet away, but the oil can be seen only on the surface of the soil, the direct source not being visible.

The upper part of the valley of Burls Creek contains many seepages at which the oil oozes directly from steeply dipping shales that here contain a large amount of glauconitic grains, making the rock green. Large calcareous concretions are abundant, and many of them take the form of septaria nodules with calcite fillings. Organic remains are frequently seen in the concretions. The soft shale is also rich in organic material, some beds being so dark as to suggest in appearance impure coal. No coal was seen by the writer in the vicinity or anywhere else in these rocks. The rocks seem to be very strongly impregnated with oil in this locality, and seepages are numerous, but large surface accumulations are rare. Broken shale recemented by ferruginous material was seen here as on Redwood Creek.

Some seepages with considerable surface accumulation of oil were seen along the edge of the tidal flat close to the wagon road halfway between Burls Creek and the mouth of the Bering River. Outcrops

were absent in the immediate vicinity, but fragments of shale indicated the presence of such rock.

Several seepages have been reported from Chilkat Creek. The largest one seen by the writer is in the west bank of the creek  $1\frac{1}{2}$  miles above the forks of the wagon road. The oil reaches the surface through soft brecciated shale with a steep westerly dip. The seepage is associated with a black sulphur spring.

Many seepages have been reported in the group of hills centering around Mount Nichawak. Those seen by the writer were small, but the oil issued directly from the rock, which is shale resembling that at the seepages west of Bering River. Others are reported to be located on the banks of a small lake that is said to be covered at times with oil.

Other seepages have been reported from various parts of the Controller Bay region, but they have not been seen by the writer. Reference should be made to those in the vicinity of Cape Yaktag, about 75 miles east of Controller Bay. The amount of oil is said to be very large, the flow being continuous from several of the seepages, one of which has been estimated to yield several barrels of oil per day. The oil is said to come directly from the rocks, which are shales and sandstones of Miocene age, and to come from a line of seepages located along the crest of an anticline parallel to the coast.



Inflammable gas comes to the surface of the water in large amounts in several places. The largest of the "gas springs" seen by the writer are in Mirror Slough and in Katalla River. The former is sufficient to furnish a large, continuous flame. The composition of the gas is not known. It issues from the mud on the bottom of the slough.

#### POSITION AND DESCRIPTION OF WELLS.

The wells in which oil has been obtained in this region are so few that they throw little or no light on the problem of the occurrence of oil. It will be shown in the following pages that a flow of oil has been obtained in one well (No. 10, fig. 1) and less quantities in three others (Nos. 5, 8, and 13). These four wells are close to seepages and are on the outcrop of the shales which have been referred to as the Katalla formation. They are all on lines of seepages having a north-northeast to south-southwest direction, and are all on the steeply dipping northwest flanks of anticlines and possibly on or near lines of faulting. It is unfortunate that no other wells have been drilled in similar positions on the structural lines alluded to above. Such wells might not be successful, but they would test the possible theory that the above-mentioned lines have something to do with the distribution of the oil.

The net result of the drilling has been to show the existence of moderate amounts of oil in at least part

of the territory. The wells are neither numerous enough nor deep enough to determine the outline of the pools and the area of productive territory. They have demonstrated the difficulty and expense of drilling and the need of ample resources and careful management. The existence of oil in remunerative quantities has neither been proved nor disproved. The evidence from the existing wells, like that of the seepages, is sufficient to warrant further testing, if it be done intelligently and carefully and by companies strong enough to exploit large areas on a scale which permits of wholesale economics, and also strong enough to risk their capital on what must certainly be regarded as a speculation rather than an investment.

The following list contains an account of each well that has been drilled in the district. The numbers refer to the geographic location of the wells, as shown on the accompanying map (fig. 1, p. 89).

1. West shore of Bering Lake. The surface rocks are sandy shales, presumably underlying the coal-bearing rocks. Dip  $12^{\circ}$  to  $35^{\circ}$  NW. Well begun in 1905. Work interrupted by accidents to machinery. Depth several hundred feet,

2. East shore of Bering River. Begun 1903. Abandoned at depth of 580 feet without reaching

bed rock because of difficulty of sinking casing through the mud.

3. Chilkat Creek. Drilled in 1904 to a depth of several hundred feet. No information available.

4. Edge of tide flats 1 mile west of mouth of Bering River. Drilled in 1904 to a depth of several hundred feet.

5. Edge of tide flats a short distance northwest of No. 4. Drilled in 1904 to a depth of several hundred feet. Oil now stands near top of casing. Small but continuous flow of gas. Amount of oil not known.

6. Strawberry Harbor. The derrick was built on piling about 1,000 feet offshore. Casing sunk deep into the mud in 1904 without reaching bed rock.

7. Strawberry Harbor. Drilled several hundred feet in 1904 without obtaining oil.

8. Redwood Creek. Drilled to a depth of several hundred feet in 1904. Oil now stands about 20 feet below the top of the casing. Quantity not known.

9. Near head of Katalla Slough. Drilled to an unknown depth in 1904. No oil, so far as known.

10. Near head of Katalla Slough. Drilled in 1902 to a depth of 366 feet, where a flow of

oil was obtained. Drilled to 550 feet in 1903 without further results. In 1904 this well was pumped for fuel at the other wells of the same company. It is now capped, the oil oozing around the casing.

11. Near head of Katalla Slough. Drilled in 1901 and abandoned because of loss of tools.

12. Near head of Katalla Slough. Drilled in 1903 to an unknown depth.

13. Near head of Katalla Slough. Drilled in 1904 to an unknown depth. Now capped, the oil squirting at times in strong jets from the casing.

14. Between head of Katalla Slough and Cave Point. Drilled in 1903 to 1,710 feet and abandoned because limit of outfit was reached.

15. Katalla River. Casing sunk to a depth of 280 feet in 1903 without reaching bed rock.

16. Near Katalla. Two holes have been drilled in 1904 to 1906 on this site, a depth of about 1,500 feet having been reached. Work is still in progress.

## PRINCIPLES GOVERNING THE OCCURRENCE OF PETROLEUM.

The four great problems of the geologic occurrence of petroleum are the origin of oil, the movements of oil in the rocks, the stratigraphic and structural dis-

tribution of the existing accumulations of oil, and the determination of the location and area of valuable accumulations from the known facts of surface geology.

These problems are stated above in the order of increasing importance from the point of view of immediate utility. The last problem can be solved in either of two ways—by expensive practical testing with the drill or by the solution of the first and second problems, together with a complete and accurate knowledge of the areal geology of the region in which the occurrence of oil is suspected. In the present condition of our knowledge the practical method is the only certain solution of this problem. But all knowledge gained in this way, as well as all facts concerning the geology of the oil-bearing rocks, leads us nearer to the solution of the other problems, and hence hastens the time when we can determine within reasonable limits the presence of oil from our knowledge of the manner in which oil originates and accumulates. The first and second problems are consequently the problems of greatest ultimate importance and should, in a public geologic investigation, be given at least equal weight with the other or immediate commercial problems.

Petroleum occurs in rocks of practically all ages from the oldest Paleozoic to the Recent. All known productive bodies of oil are in rocks of sedimentary

origin, such as sandstones or sands, shales or clays, limestones, and conglomerates. Minute quantities of oil have, however, been seen in volcanic or other crystalline rocks.

The origin of petroleum may be explained according to one of two theories. The oil may be of organic origin, having been derived from animal or vegetable matter which was associated with the mineral constituents of the rocks at the time they were deposited, or it may be of inorganic origin, having been formed by the chemical action of water on the formerly unoxidized mineral constituents of the rocks. The prevailing scientific opinion is in favor of the organic theory for the origin of the larger and more widespread accumulations of petroleum.

The movement of petroleum in the rocks is controlled by four factors—the direct action of gravity, capillary attraction, the presence of water, and gas pressure.

The effect of the direct action of gravity is to cause oil to go down as far as the rocks are porous, dry, and not too warm for the oil to exist as such. It will sooner or later be stopped in this downward movement by an impervious stratum (either a bed of close-textured rock or a bed filled with water), and will then move laterally along the upper surface of that stratum to its lowest point, where it will accumulate.

The effect of capillary attraction is to cause the oil to be diffused throughout the rocks in all directions, provided the rock is dry and of the right texture to permit capillary movement. The directions in which it will move will be controlled by the distribution of porous rock and will be modified by the other factors here discussed.

The presence of water causes an upward movement of the oil. The essential conditions for such movement are a porous rock containing both water and oil and a lower limit beyond which the water can not go. The water, because of its greater density, seeks a lower level than the oil and forces it upward until either the demand of all the water for space is satisfied or the oil is checked in its upward movement by an impervious stratum. In the former case the oil rests on the surface of the water in a state of equilibrium; in the latter case it is confined under pressure with a potential upward force.

Gas pressure tends to drive the oil in any unblocked direction. The requisites for oil movement caused by gas are the presence of gas, either in a contiguous body to the oil or being given off from or within the oil, and an impervious bed above the gas through which it can not pass. The gas then tends to accumulate on the upper surface of the oil and to force the oil downward in the direction of least resistance, which may either be vertical or have a lateral com-

ponent. The oil would already have been in the lowest available space, and so further downward motion implies the displacement of water. The motion continues until there is equilibrium between the expansive pressure of the gas and the hydrostatic pressure of the water. The oil is then confined between these forces and will escape under pressure at the first opportunity.

The most favorable conditions for the occurrence of petroleum over large and regular areas are the following:

1. A large and widely distributed original source of oil-yielding material.
2. Thick, extensive, and regular porous beds in which the oil can move freely and accumulate.
3. Impervious beds above and below the porous beds.
4. Small angles of dip and fairly regular structure.
5. Absence of deep fracturing or of irregularities of structure.
6. Absence of water in the rocks if the oil-bearing beds are synclinal; or presence of a moderate amount of water if they are anticlinal.



Such conditions are favorable to the occurrence of petroleum in large, regular, and easily outlined pools, to moderately large production and long life of the wells, and to a large degree of certainty in oil prospecting.

These conditions probably nowhere exist in their entirety, at least not over any broad area. Some of the Mississippi Valley and Appalachian oil fields come nearer to satisfying these conditions than any others in North America. It is very evident that few of these conditions are met in the Controller Bay region, and therefore nothing will be gained from further comparison with regions in which simple structure predominates.

Some of the California, Wyoming, and Colorado oil fields are characterized by complex and broken structure, in this respect being not unlike the Controller Bay region. These western fields show that it is possible for large accumulations of oil to exist in rocks with steep dips, irregular folds, and large faults. They show that the structure does not make it impossible for oil to exist in quantity in the region under discussion, but they show also the difficulties of drilling and of locating the pools in such a field, and demonstrate very clearly the need of careful operating and the risks which are necessarily involved.

## OUTLOOK FOR PROFITABLE EXPLOITATION.

### PROBLEM OF LOCATING POOLS.

If oil is found in quantity it will almost certainly be in circumscribed areas, and the location and boundaries of these areas will be of the utmost importance in the development of the field. The position, size, and shape of these productive areas cannot be foretold in advance of all drilling or at the present stage of development. The wells which have been drilled in this region are so few, most of them are so shallow, and so little oil has been obtained that they give almost no light on the occurrence of oil in the rocks. But if at least one area were outlined wholly or in part by the known position of productive and nonproductive wells it would then be possible to determine the relation of the occurrence of the oil to the geology and from the known facts of the geology to outline other possible productive areas in advance of drilling. For this reason it is of the utmost importance to obtain complete and accurate records of all wells, and to use the information and experience thus gained in locating subsequent wells.

DIFFICULTIES OF DRILLING.

Crooked Holes.

Much difficulty has been encountered in keeping the wells vertical, and delay and expense have resulted from the necessity of frequently reaming out the holes in order to straighten them. The crooked holes are the natural result of the steep inclination of the beds, with frequent alternations from hard to soft rocks. Whenever the drill passes from a soft rock to a harder one dipping at a steep angle the drill tends to be deflected and a crooked hole results. This difficulty will always be encountered in this region and will increase the time and cost of drilling. It will, however, become less as the knowledge of the local conditions becomes greater, for the tendency of the drill to deflect can be lessened by drilling slower when the deflecting bed is struck and by special shaping of the tool, and the holes can be straightened more quickly when the drillers have had more experience in the region.

CAVING.

When a well in soft or fractured rock stands uncased too long, the rock caves in, often burying and frequently causing the loss of the tools, and sometimes it is necessary to abandon the well. Much delay has been caused in this way at most of the local wells and it has added greatly to the cost of drilling.

It has been impossible on this account to drill several of the wells as deep as they would otherwise have gone. The only remedy is to case the well at the proper time, and when the drillers know better the rocks with which they are dealing they will be able to anticipate the caving and introduce casing at the time when it is needed. Conditions may in this way be expected to improve in the future, and thus the cost will become less and the speed greater and it will be possible to sink wells to greater depths.

#### WATER.

The rocks of this region are full of water, and consequently large amounts are encountered in all the wells. This is undesirable for two reasons—the pressure of the column of water in the well keeps the oil back in the rocks and prevents it from coming out into the well, and the water reduces the effective weight of the drill and acts as a cushion between the drill and the rock, in both ways reducing the power of the blow. The only remedy is in casing off the water, which can not be done too often without reducing the size of the hole to undesirable dimensions and finally limiting the depth to which it can be drilled without pulling the casing and going back and reaming out the hole.

REMOTENESS FROM SUPPLIES.

The remoteness of this region from a base of supplies increases the cost of labor and of freight, which will be discussed under a subsequent heading, and also increases the time and expense of drilling, by making it necessary either to carry an exceptionally large equipment of fishing and repairing tools and of general supplies or to be subject to delays in ordering special tools from a long distance. Conditions will improve in this respect with better facilities for communication and transportation, and can also be bettered if machine shops and supply depots are established, as they will be if the presence of productive oil territory is shown.

INEXPERIENCE WITH LOCAL CONDITIONS.

The difficulties caused by the lack of experience of the drillers with the rocks of the local section have already been alluded to under various headings. They may be summarized as including failure to drill slowly or dress the tools so as to avoid deflecting the drill on hard, steeply inclined surfaces; failure to note the crookedness of the hole and remedy it promptly; ignorance of local caving strata and consequent failure to case in time to prevent cavings; and failure to obtain proper and adequate outfit and supplies.

## COST OF LABOR AND TRANSPORTATION.

The cost of drilling has been very largely increased over what it would be in more favored and better established oil fields by the high cost of labor and of transportation of men and freight. Not only are the drillers paid higher wages than they would receive at most localities, but the unskilled labor receives excessive pay. It is highly probable that when conditions become more settled and work is done on a larger and more permanent scale wage conditions will become more normal and transportation charges will be reduced.

## SHIPMENT AND MARKETS.

If petroleum is produced in commercial quantities at Controller Bay a new set of problems concerning its disposal will arise. All the petroleum of the region, as far as is now known, is a refining oil of high grade, for which there is a good demand on the Pacific coast. The content of extremely volatile constituents, such as gasoline, is so great that it is questionable whether the oil can be safely shipped in bulk without some refining. There are plenty of good sites for refineries at no great distance from the wells. If a harbor in the vicinity of Katalla or elsewhere on Controller Bay is utilized it will be a very simple matter to transport the oil from the wells to the wharves by short pipe lines on a practically level grade. If no harbor in the immediate vicinity can be used it

will be necessary to ship from Orca Bay or elsewhere on Prince William Sound, a distance of about 80 miles westward and across Copper River. The grades to Orca are almost nothing and there will be no difficulties except in crossing Copper River. The distances from Katalla and from Orca to Seattle by the steamer route, "outside way," are about 1,250 and 1,350 statute miles, respectively.

### CONCLUSIONS.

The geographic conditions are such as to cause heavy initial expense of prospecting and drilling, but admit of permanent improvements which will make these conditions much better without great engineering difficulties or excessive cost.

The geology is complex and difficult to interpret and does not show definitely the relation of the occurrence of the petroleum to the stratigraphy and structure. The known facts of the local geology are unfavorable to the presence of productive bodies of oil, and indicate that if oil is found in quantity the distribution of the productive areas will be very irregular and difficult to locate.

The surface oil showings (seepages), though widespread and copious, are not conclusive evidence of the occurrence of productive oil pools. They are apparently more promising than any other known facts in regard to the region would indicate. The only safe conclusion to be drawn from them is that they

indicate the possibility of productive oil areas in the vicinity.

Operators and investors who may not be familiar with local conditions will do well to be governed by the following suggestions:

1. They should be certain that legal title can be obtained to a sufficient area to make it possible to sink many test wells under widely different conditions, and to expect a large enough probable production to pay for heavy initial expenditures and large permanent improvements.

2. They should have large enough capital to be able (a) to purchase in quantity and at low rates; (b) to build good roads and other improvements and thus reduce the cost of operating; (c) to carry a large stock of tools and supplies in order to avoid costly delays in drilling and to be able to drill deep; (d) to procure the best professional advise and good drillers; (e) to drill many test wells without hope of immediate profit; (f) to market the product in the face of the existing conditions in the petroleum industry; and (g) to afford to lose the investment.

3. The first wells should be located on the strike and at no great distance from producing wells, or down the dip from a good seepage and at such varying distances that the rocks outcropping at the seepage will be encountered at depths ranging from a few hundred feet to the limit (in depth) of drilling.



4. Subsequent wells should be determined in position by the location of existing wells and by the structure. They should be along the strike and close<sup>a</sup> to productive wells, and either not along the strike and at a short distance or on the strike and at a considerable distance from nonproductive wells.

5. Drillers and tool dressers should be obtained from regions where there is difficulty in keeping the holes straight.

6. If oil is obtained it will probably be down the dip rather than up the dip from a seepage, in shallow wells near a seepage, or in deeper wells farther from a seepage.

---

<sup>a</sup> The distance should vary with the porosity of the containing horizon.

